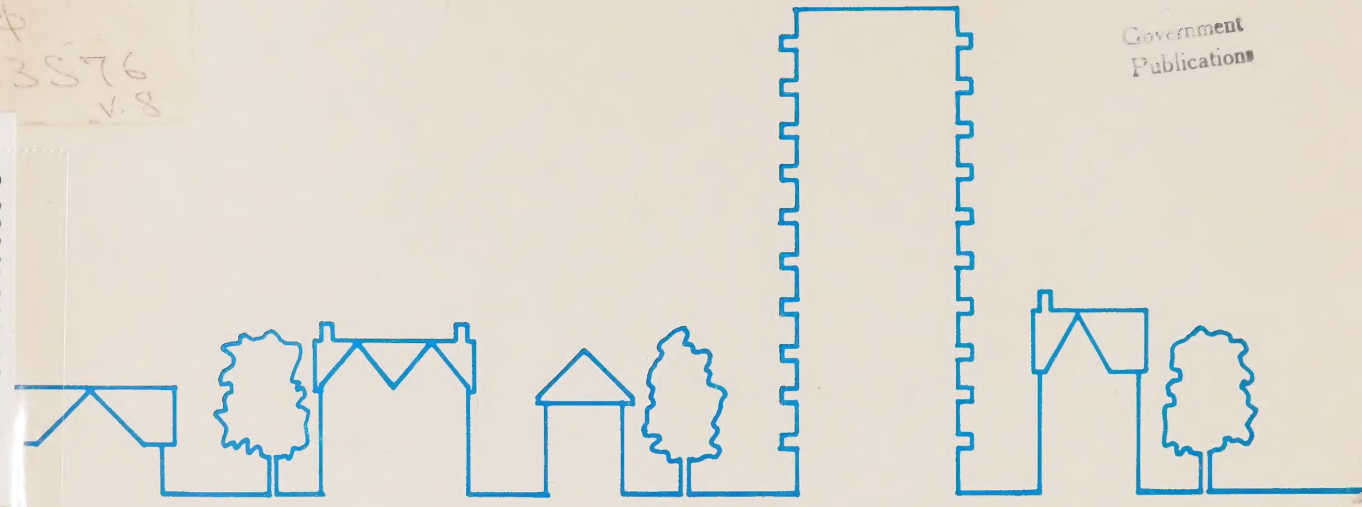

STUDY OF RESIDENTIAL INTENSIFICATION AND RENTAL HOUSING CONSERVATION

PART 3 : RESIDENTIAL INTENSIFICATION AND FUTURE HOUSING NEEDS

3.6: MUNICIPAL AND PROVINCIAL POLICIES AND REGULATIONS

PREPARED FOR
THE ONTARIO MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING
AND THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO

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VOLUME 8

NOTE:

This is a consultants' report. Any statements or opinions expressed herein are those of the writers or of persons quoted and, unless otherwise noted, are not necessarily endorsed by the Ministry of Municipal Affairs & Housing, Government of Ontario, or the Association of Municipalities of Ontario.

FOREWORD

This study was commissioned jointly by the Ontario Ministry of Municipal Affairs and Housing and the Association of Municipalities of Ontario. Funding for the study was provided by the Ontario Ministry of Municipal Affairs and Housing through the Housing Renovation and Energy Conservation Unit of the Community Housing Wing. The Ministry's chief representative on the study was Mr. George Przybylowski of the Housing Renovation and Energy Conservation Unit. In this capacity, Mr. Przybylowski was the prime client contact throughout the study process and the consultants wish to express their gratitude to him for his considerable personal committment to this study and the many creative and useful suggestions he made during the course of the investigations.

The findings, conclusions and recommendations contained in the various volumes of the study report are those of the consultants as are any factual errors they may contain. The report does not constitute Ontario Government or A.M.O. policy but is a report to these two organizations for their consideration.

Peter G. McInnis
Study Director

TABLE OF CONTENTS PART 3.6 MUNICIPAL AND PROVINCIAL POLICIES AND REGULATIONS

GENERAL INTRODUCTION

This document forms one volume of an eleven volume study report commissioned jointly by the Ontario Ministry of Municipal Affairs and Housing and the Association of Municipalities of Ontario (A.M.O.) in July, 1982. The prime objectives of the study were:

1. To examine the opportunities and constraints that exist for meeting some of the future additional housing needs in Ontario during the 1980's and 1990's through the intensification of existing residential neighbourhoods.

2. To examine some of the major forces at work that have and could threaten the conservation of the existing stock of rental housing and the tenants that occupy this stock.

These objectives were formulated in response to concerns on the part of the Ministry and A.M.O. regarding recent and emerging trends in housing and urban development and population growth and change in Ontario.

It is safe to assume that there will continue to be a demand for more rental and ownership housing units in Ontario during the 1980's and 1990's due to both an absolute increase in population and an increase in the number of households. However, there is growing evidence that this demand could be different in nature than during the last decade. While demand will continue to be focused in urban areas, there will likely be increasing pressure for inner city housing particularly in the larger urban centres such as Toronto, Ottawa and Hamilton. Also, households are getting smaller and older; and more people are beginning to accept the prospect of never being able to afford to own a home. These trends suggest that there will be an increasing demand for smaller dwellings. While consumer preference information may not support this, the general state of the economy and the future affordability of housing may dictate these demands.

The Government of Ontario and the Association of Municipalities of Ontario are concerned about how these additional and somewhat different housing needs of the 80's and 90's will be met, particularly in light of the downturn in the construction of new private rental housing; the economic prospects for the 80's and 90's and the likely restraints on public expenditures related to new facilities and services and socially assisted housing; and the increasing difficulty of providing new housing through large scale redevelopment and/or a further expansion outwards of Ontario's urban fabric.

There are two major approaches to creating additional housing: 1) building new and 2) making more efficient (intensive) use of the housing stock that currently exists. This study is aimed primarily at the latter and specifically at the potential for meeting some of the future housing needs in

the Province through the conversion of the existing stock of some 1,200,000 grade-related owner occupied dwellings in the Province. The extent to which this study is concerned with new housing was limited to the opportunities that might exist for small scale residential infill in residential neighbourhoods.

In addition to being concerned about meeting additional housing needs, the Ministry and A.M.O. were concerned about conserving the existing rental stock in a safe and livable condition for at least the same number of households as it currently accommodates. While this aging/conservation issue is by no means a new one, the nature of the issue will likely be quite different in the future. Until the late 1950's, the vast majority of housing in the Province was grade-related and owner occupied, and the conservation of these types of dwellings usually happened as a matter of course without much concern or assistance on the part of governments. In the last 30 years, however, the housing stock profile has changed dramatically with the advent of the high-rise apartment building. Rental apartments in multiple unit buildings form a much larger proportion of the stock than ever before. Approximately two-thirds of the over one million rental housing units in Ontario are located in high-rise or low-rise/walk-up multiple unit apartment buildings. Forty percent or 434,000 of the total rental units are in high-rise buildings. The conservation of the apartment rental stock has never been a serious issue in the past because of the relative newness of this stock. However, as these buildings age during the 80's and 90's (many are already 20 years old), serious attention will have to be given to the efforts that will be required to maintain these units in a safe and livable condition and within the economic reach of a large majority of the population. Therefore, the second objective of this study was in part, to examine the type of building repairs and improvements (and their associated costs) that will be required to conserve the Province's stock of some 434,000 high-rise rental apartments over the next 20 years.

A second rental housing conservation concern of the Ministry and A.M.O. had to do with the perceived loss of low-income rental accommodation that has traditionally been available in the form of rooms and apartments in grade-related dwellings in older neighbourhoods. Specifically, the study was to examine the extent of the loss of this type of housing due to demolition and deconversion resulting from the gentrification of these dwellings and the impact these losses have had on tenants.

The investigations were carried out by a series of five individual consultants working under the direction of a sixth consultant retained to coordinate and direct the study investigations. The work of each consultant was monitored and reviewed by a core study group made up of the five consultants, the study director and representatives of MOMAH and AMO.

Core Study Group

Study Director:	Peter McInnis Klein & Sears Research and Planning Limited
Consultants:	Michael Adams Environics Research Group
	Jack Klein Klein & Sears, Architects
	Greg Lampert Clayton Research Associates
	Frank Lewinberg Lewinberg Consultants
	Peter Milligan Walker, Poole, Milligan
Ministry Representatives	Sue Corke Gary McAllister George Przybylowski
A.M.O. Representatives:	Mayor W. McLean Town of Ajax
	Gwyn Simmons City of Ottawa Non-Profit Housing Corporation
Special Assistant To Core Group:	Betty Kaser

While the consultants' work on this study began formally at the beginning of July, 1982, some considerable effort was spent in advance of this start-up by a steering committee of Ministry and AMO representatives in developing terms of reference and a work plan with the Study Director that reflected the findings of an extensive and detailed review of the literature pertaining to the issues in question. This literature review was carried out by David Hulchanski for the Ministry during April and May of 1982 and has been published under separate cover. The prime purpose of this review was to identify the extent to which the issues in question had already been considered and the findings and conclusions that had been reached in order that the consultants' work could be focussed on those issues about which there is limited knowledge or understanding. Also, this review provided a valuable basis for establishing certain propositions to be tested in the study.

The investigations, particularly those relating to Objective #1, were carried out on a case study area basis in the municipalities of Toronto, North York, Hamilton, Kingston, Woodstock and Ottawa with special input from municipal officials in Thunder Bay. These municipalities were selected to reflect the fact that many of the issues under investigation were more associated with larger urban areas as well as to provide, at the same time, a range of sizes of municipalities for comparative purposes.

The overall study report is organized into 11 separate volumns. These 11 volumes follow the 5 part organization of the findings, conclusions and recommendations of the study investigations as indicated below:

PART #	TITLE (Prime Consultants)	VOLUME #
1	Summary of Findings And Recommendations (Klein & Sears)	1
2	Economic And Demographic Trends for the 80's and 90's (Clayton Research Associates)	2
3	Residential Intensification And Future Housing Needs	
	3.1 Physical Potential (Clayton Research Associates)	3
	3.2 Economic Issues (Klein & Sears and Clayton Research Associates)	4
	3.3 The Supply Process (Environics Research Group and Clayton Research Associates)	5
	3.4 Tenant Demand (Environics Research Group)	6
	3.5 Neighbourhood Impact And Resistance (Environics Research Group and Lewinberg Consultants)	7
	3.6 Municipal And Provincial Policies And Regulations (Walker, Poole, Milligan)	8
4	Conserving The Existing Rental Housing Stock	
	4.1 Recent Rental Stock Losses and the Impact of Deconversion (Clayton Research Associates and Lewinberg Consultants)	9

This particular volume (Volume #8) of the study report was prepared by Mr. Peter Milligan of the law firm, Walker, Poole, Milligan. As indicated above, Volume #8 deals exclusively with the opportunities and constraints re. intensifiction presented by municipal government policies and regulations as reflected in existing official plans and by-laws and by certain provincial regulations such as the Ontario Building Code.

INTRODUCTION TO PART 3

This part of the study deals with Objective #1

> "To examine the opportunities and constraints that exist for meeting some of the future additional housing needs in Ontario during the 1980's and 1990's through the intensification of existing residential neighbourhoods"

"Residential Intensification" as used in this study means increasing the number of households accommodated in existing buildings and/or on existing serviced land in already built-up parts of urban areas through conversion of existing structures and through additions to existing structures and the building of new structures on vacant or near vacant land. Intensification as used in this study is achieved with little or no demolition of existing buildings.

The interest in intensification reflects emerging housing market trends, changing urban population profiles and the economics of new housing construction, in particular new private rental apartments. In addition, the interest in intensification as a means of meeting some of the future housing needs in Ontario stems from a number of factors not the least of which is the economic restraint under which governments at all levels now find themselves operating and the prospect of similar conditions prevailing over the next several years. These restraint conditions have caused some governments to cut back on or freeze spending on new facilities and services and seriously assess the efficiency with which existing facilities are used. The argument in support of intensification to provide additional housing is, in part, due to these economic restraints and the potential that may exist for increasing the number of households being served by the existing urban infrastructure.

This study defined 7 basic forms or models of conversion and infill that meet the above definition of intensification:

1) changing grade-related type dwellings from single household use to accommodate a number of unrelated households or individuals with no or minor physical alterations (e.g. small group homes for seniors and rooming houses or a roomer in an owner-occupied dwelling)

2) changing grade-related type dwellings from single household use to self-contained accommodation for more than one household through physical alterations (e.g. duplexes, triplexes, etc.);

3) building an addition (vertically or horizontally) to a grade-related dwelling to increase the number of dwelling units;

4) building a second or third separate dwelling on a lot which presently has one dwelling unit in place (e.g. back lot or side lot development);

5) building several separate dwelling units on a lot which already has a multiple family development in place (e.g. building on landscaped open space around a high-rise building);

6) converting existing obsolete non-residential space to residential use (e.g. over stores along arterials); and

7) building new multiple residential units on vacant or near vacant sites in commercial areas (e.g. mixed-use projects in core areas).

While Models #6 and #7 are critical forms of intensification, the opportunities and constraints related to these models are well researched and documented. In fact, in the past few years the Ministry itself has conducted two investigations into the potential for residential and mixed commercial and residential infill development in the core areas of Ontario municipalities. This study concerned itself soley with investigating conversion and infill potential in existing residential neighbourhoods because of the paucity of good information that exists on the subject. In particular, emphasis was placed on the conversion models and their potential application to the 1.2 million grade-related owner occupied dwellings in Ontario urban centres of more than 10,000 people.

Models #2-5 are graphically illustrated in Figures 1-6 on the following pages. These figures provide just a few examples of the multitude of different physical forms the various types of intensification could take.

The examination of the opportunities and constraints associated with the creation of additional housing by means of the 5 models is examined in terms of:

- the physical potential of intensification vis-a-vis such issues as the convertability of various house forms, current intensity of use and the opportunities for infilling around or adding to existing dwellings;

- the economics of intensification in respect to the costs of creating new accommodation and rents required to pay for this accommodation as well as the economic impact of intensification on municipalities;

- the supply process or who could and would undertake various forms of intensifiction and the motivations for doing so as well as the capability and attitudes of the construction industry and lenders to facilitate intensification activities;

- the market demand for various types of accommodation that could result from intensification among various segments of the tenant market;

- community and neighbourhood impact and resistance that may occur as a result of or in anticipation of increased intensification activities in the various types of neighbourhoods that are traditionally found in the urban fabric of Ontario municipalities;

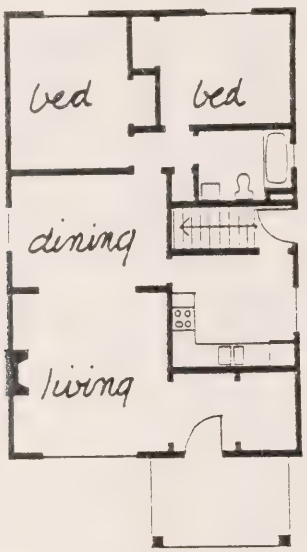
- government policies and regulations and in particular, municipal official plans and zoning by-laws.

FIGURE 1 – Model 2

BUNGALOW CONVERSION

- a self contained one bedroom unit is provided in addition to the existing ground floor unit
- existing basement stairs are located adjacent to the back entrance facilitating conversion
- window wells or excavation to create a sunken patio can increase natural light for a basement apartment
- if the basement is already finished and/or a bathroom is in place, the conversion is likely to be less costly

BEFORE



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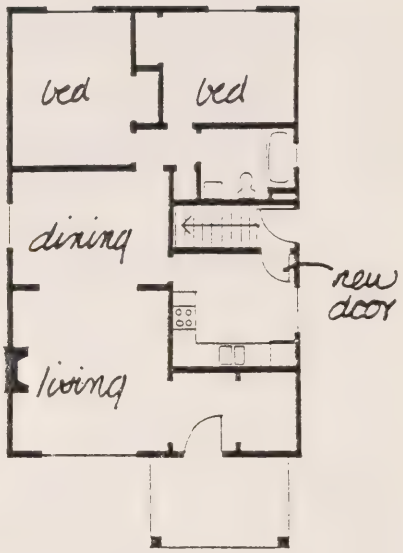

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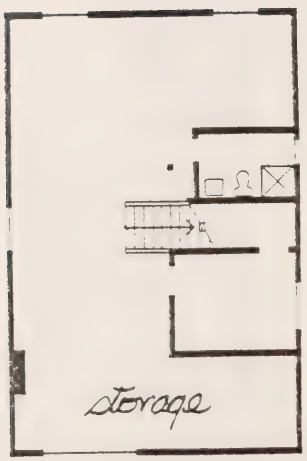
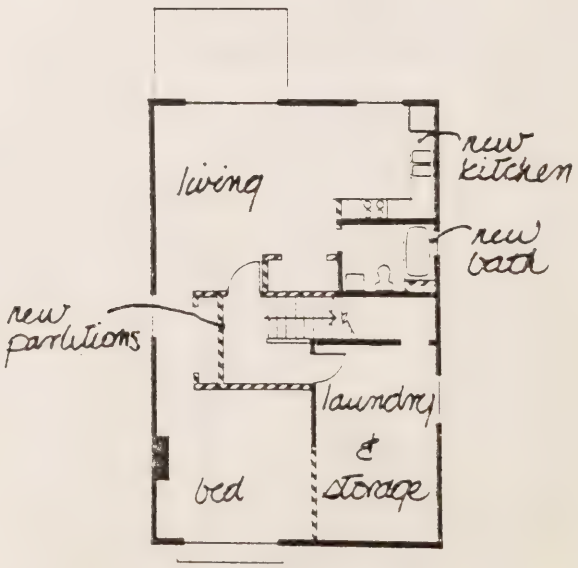


BASEMENT



BASEMENT

FIGURE 2 – Model 2

CONVERSION OF A THREE STOREY SEMI-DETACHED HOUSE

- the house is converted to provide a one bedroom unit on the ground floor and basement and a two bedroom unit on the second and third floors
- stairs and entrances are generally found on the party wall of semi-detached homes. This plan form lends itself readily to natural hall circulation
- decks can be added to second or third floors to provide additional space
- a larger house such as this provides more options for conversion. The house could be converted in a number of ways including three or four self-contained units, one on each floor or leaving the existing basement and converting to provide a bachelor apartment on one floor and a two bedroom apartment on the remaining floors

FIGURE 3 – Model 2

CONVERSION OF A TWO STOREY DETACHED HOUSE

- the house is converted to provide a one bedroom unit on the ground floor and a one bedroom unit on the second floor
- the centre hall plan of this house is not as easily adaptable as the side hall plan of the previous illustration. The resulting circulation pattern within the units tends to be from room to room rather than off a hall

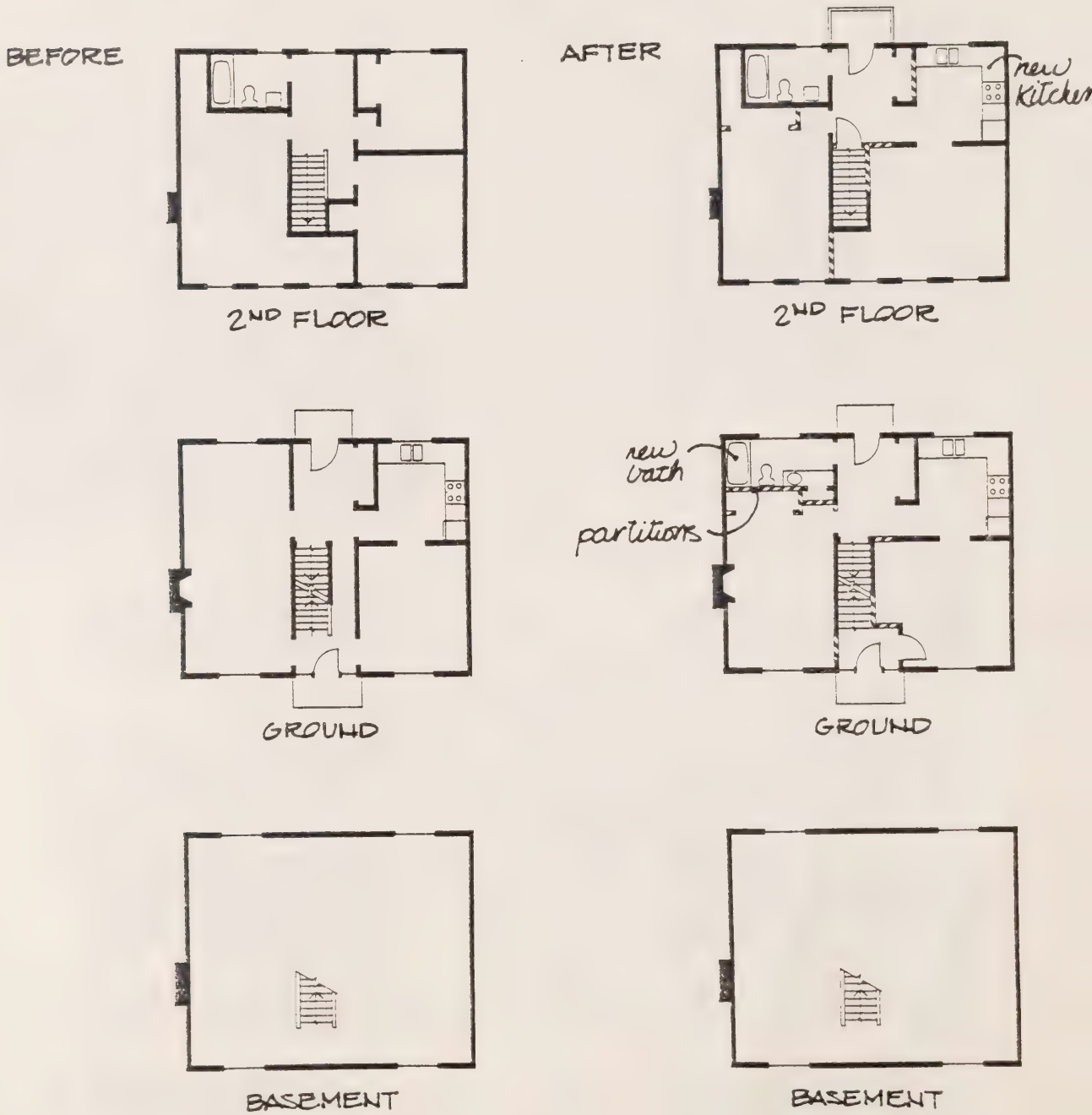


FIGURE 4 – Model 3

VERTICAL ADDITION

- a second storey is added to an existing bungalow to provide a second self-contained dwelling unit
- as the ceiling of the ground floor unit is exposed during construction, timing and weather are important concerns in planning for this type of addition

HORIZONTAL ADDITION

- an existing garage is converted to residential space and provides a bachelor unit
- garages frequently have an existing back door and windows which can be incorporated in the conversion
- if the plumbing in the existing house is on the side of the house adjacent to the garage, the addition is likely to be less costly
- as this unit is grade related and provides access without stairs, it is particularly appropriate for a "granny unit"

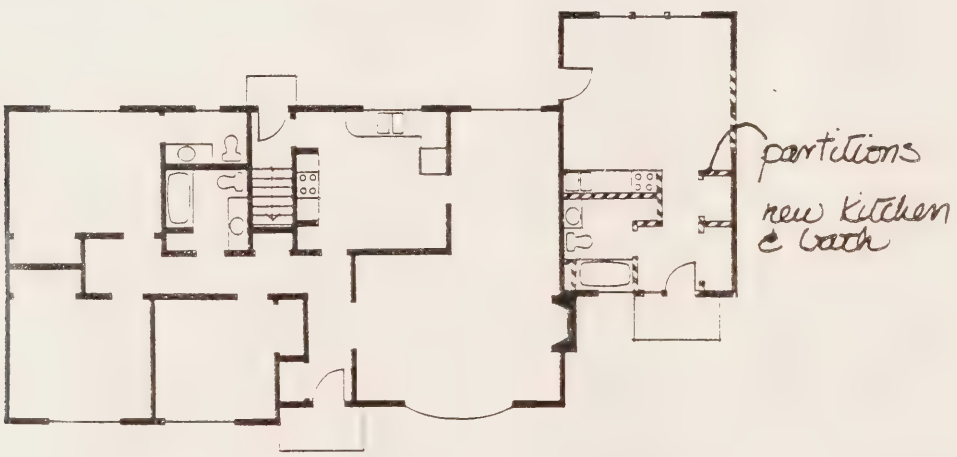


FIGURE 5 – Model 4

BACK LOT INFILL

- new housing units are built at the back of the lots on which there are existing houses
- access is from a back lane in one example and from the street using the side driveway in the other
- the length of the lot and the location of the house on the lot are critical factors. Generally urban land use patterns will accommodate this type of infill more readily than suburban land use patterns where the house is typically situated close to the centre of the lot
- the new housing could provide more than one unit or larger units by building more than one floor

BACK LANE ACCESS

SIDE DRIVE ACCESS

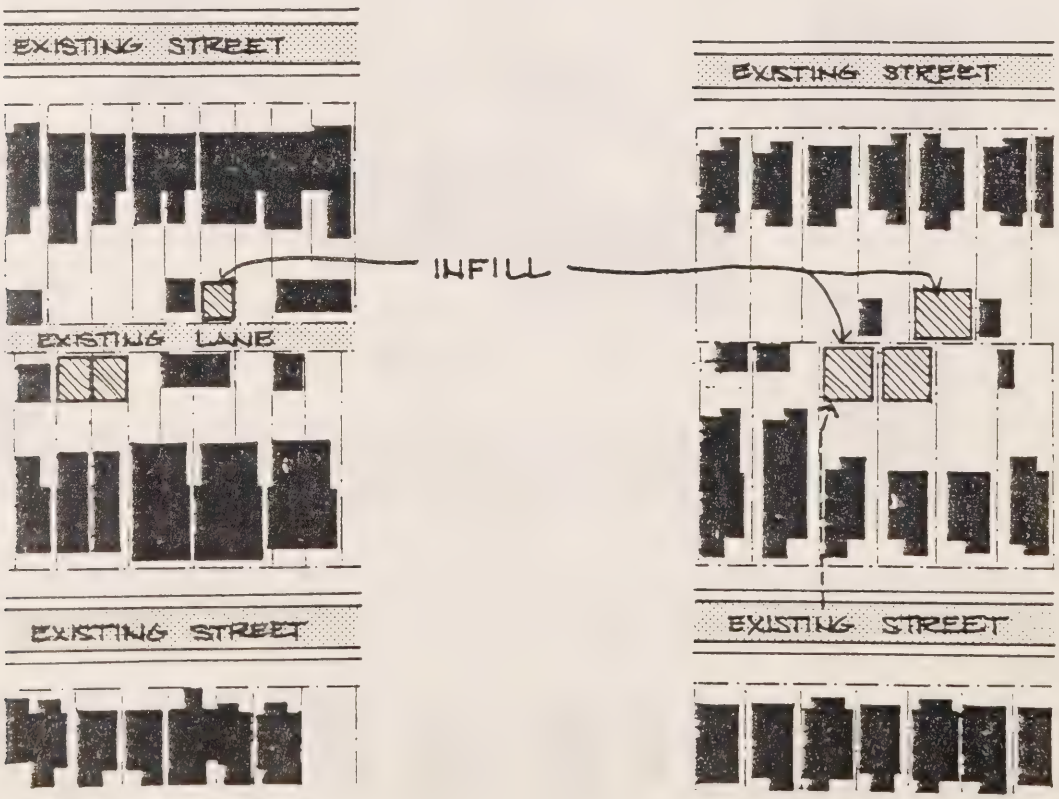
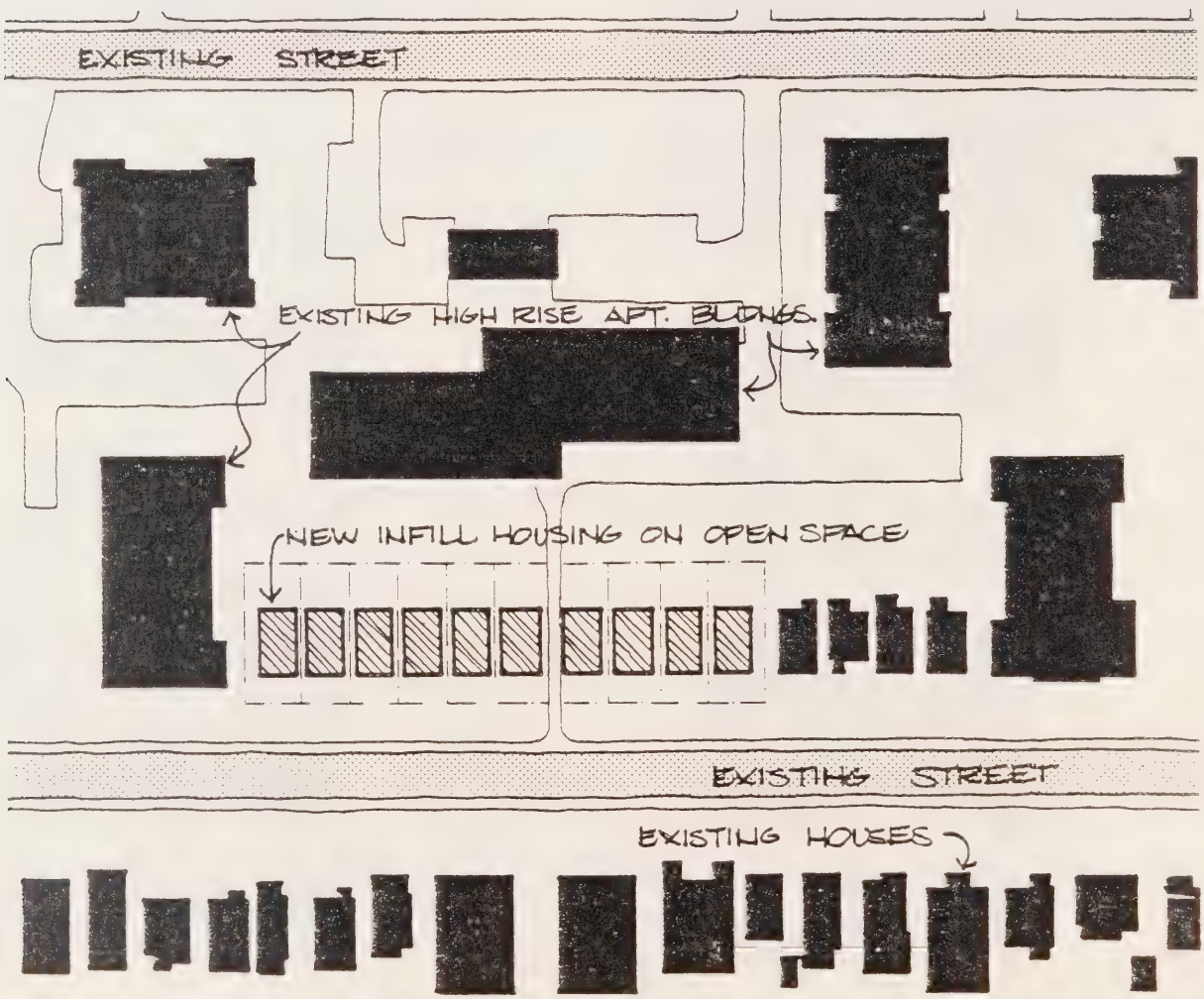


FIGURE 6 – Model 5

INFILL ON APARTMENT GROUNDS

- a number of single family houses are shown as infill in the landscaped open space of a high rise apartment building. The new housing could also take the form of semi-detached housing, row housing or low rise apartment structures
- the housing type could be selected to be consistent with the surrounding neighbourhood
- existing underground garages for the high rise apartment buildings often have surplus spaces which could be used for the new infill housing



PART 3.6

MUNICIPAL AND PROVINCIAL POLICIES AND REGULATIONS

This study was prepared for The Ontario Ministry of Municipal Affairs and Housing and The Association of Municipalities of Ontario. The author wishes to acknowledge the contribution of Anna Fraser in the research, analysis and drafting of this study and the contributions of the other consultants and study participants. The opinions expressed are the author's own and do not necessarily represent either M.O.M.A.H. or A.M.O.

Prepared by: Peter A. Milligan of
Walker, Poole, Milligan

1.0 INTRODUCTION

The focus of this portion of the investigations was to assess the opportunities and constraints presented by the existing relevant municipal and provincial legislative fabric in Ontario to the intensification of existing residential neighbourhoods.

The success of programs for increasing housing stock through intensification will be significantly controlled by the legislative and regulatory environment within which they are promoted. Official plans and zoning by-laws enacted under the Planning Act, Ontario Building Code provisions and other local regulations provide the specific framework in which attempts at intensification currently proceed and the environment within which more aggressive programs would necessarily have to proceed. If the environment created by existing legislation and regulations is found to be harsh or hostile, then little weight can be given to the supply that would be generated by intensification.

The analysis which follows firstly examines how such legislation and local regulation presently responds to intensification by use of the five intensification models as measurement and reference points. By measuring the extent to which these five models are constrained, certain conclusions were reached as to aspects of legislation or local regulation which would have to be specifically addressed in order that residenital intensification could be encouraged.

Official plans contain programs and policies designed to secure the health, safety, convenience or welfare of the inhabitants of an area and they have, to some degree, served as a recognition of community expectations insofar as issues of overall development are concerned. The new Planning Act will refocus the present notion of "Official Plan" to the extent that the legislative emphasis will be the issue of physical development of the municipality, taking into account social, economic and environmental matters as found relevant. To this end, the entire issue of housing, its creation, conservation, and access to various income groups, should be central to the official plan document.

The zoning by-law, in implementing the objectives of official plan policies, directs itself specifically to the regulation of the use of land to ensure the orderly development of the community. What is not often fully appreciated is the extent to which zoning, in this perceived regulatory function, expresses the socio-economic expectations of the community. Acting as a rigid tool, zoning will achieve not only the development of a community, but ensure its perpetuation, protecting those who live in it from change that might be sensed as negative or potentially destabilizing to the existing fabric.

By definition, intensification activity presents change. A more efficient use of the urban fabric and, in particular, its housing stock necessarily implies a departure from existing circumstances. The extent to which intensification

activity confronts existing regulations and their underlying policy rationales must be measured so that the extent of the constraints on such activity can be fully assessed.

To examine the nature and extent of the constraints present, the policies and regulations of each case study municipality have been examined. Once identified, these constraints (primarily but not exclusively zoning) have been tested against each of the five models to ascertain the existing level of constraint insofar as that particular model is concerned. By arraying the various regulatory provisions in this manner, one can establish whether the particular model would be permitted "as of right" or would require relief from one or more of the constraints identified. Additionally, in cases where the development of a particular model would require relief, the extent of such relief can be measured and certain observations made regarding the potential level of regulatory resistance that would be encountered if the model were proposed for actual development.

In proceeding with the regulatory review, all of the municipal by-laws were discovered to contain some form of housing conversion provision. One of these, contained in the City of Hamilton by-law, has been in existence for more than thirty years. This somewhat surprising discovery provided an opportunity to examine the practical application of conversion provisions in the case study municipalities where found, as well as an opportunity to attempt to trace their legislative and political history. These existing conversion provisions have also been tested against the relevant intensification models to ascertain the extent to which they could be subjectively interpreted as representing constraints or opportunities.

The existence of these conversion provisions is interesting recognition that the conversion scenario has, to some extent, been a fact of life in Ontario for some time. The contents of these provisions have assisted in our identification and review of the performance standards which seem to attach to conversion-related activities such as the minimum age of a dwelling that may be converted or a prohibition against increases in floor area or external change to the structure. By analyzing the use, or arguably the abuse, of such provisions as well as their utility and potential for application, a clearer picture has been obtained of community concerns regarding conversion in the case study municipalities as reflected by the local by-laws.

An additional surprising element encountered in the course of this study was the discovery of significant numbers of illegally converted housing units in the case study municipalities. While not all existing converted dwellings are illegal, a significant number of converted units appear to be illegal from one or more perspectives. Many are illegal because they were converted without a building permit and in all probability offend provisions of the Ontario Building Code and any local building regulations. Both building without a permit and offending the Building Code create an illegality. Still other units are illegal because they are located in an area zoned to prohibit converted dwelling use and were created subsequent to the enactment of the by-law creating the permitted use category. It is entirely possible that such

converted dwellings offend both the Building Code and the local zoning by-law. The existence of a substantial stock of such units was recognized as contributing in a meaningful way to meeting the demand for housing which in the case study municipalities was partially reflected by low vacancy rates for rental accommodation. In focussing on the rather sensitive issue of illegal units, some effort was directed to ascertaining the causes for their creation. Whether created in pure ignorance of regulation, as a result of economic necessity, or simply to profit from the demand for these units, there is little argument that they are essential in meeting present demand. If subjected to a concerted enforcement program, a significant number of units could be lost from the amount of housing stock available and, if left unreplaced, could result in further pressure being exerted on an already pressurized and explosive shortage of affordable rental housing in Ontario.

The final issue to be examined was that of how the present development and building approval processes, through which various development proposals for intensification might have to pass, impact on intensification. The concern here was that significant constraints would be discovered which would act as real discouragements to the creation of additional housing units through conversion and infill activity. To this end, the approval process was examined on the basis of its complexity - e.g., its ability to be comprehended and navigated by members of the community at large; its application to the five models; and the time and expense necessarily involved in obtaining such an approval.

Sections 2 through 4 of this paper examine whether or not the five models would be permissible in any area within the six case study municipalities and, if so, subject to what conditions. Section 5 examines the possible impact the Ontario Building Code might have on intensification, while Section 6 looks at the implications of existing local development and building approval processes on such activity. The final section of this paper addresses the issue of existing illegally converted dwellings.

Appendix A provides a detailed listing of all of the policies and regulations in the six case study area municipalities that apply to the five different models of intensification. Appendix B includes more detailed discussion on a number of issues raised in Sections 3 and 4 pertaining to the regulations contained in Appendix A.

The analysis is based on a review of the municipal regulations and, to an extent, information obtained from key informant interviews. While, in theory, it is possible to ascertain if an intensification proposal can proceed by applying the performance standards in the regulations, it was discovered that it is, in fact, the practical and sometimes subjective implementation of these provisions that determines if intensification will actually be permitted. Key informants provided essential insight into the local attitudes and, often, as a result of those attitudes, the implementation approaches taken to intensification initiatives.

2.0 SUMMARY OF THE IMPACT OF OFFICIAL PLAN AND BY-LAW PROVISIONS OF THE SIX CASE STUDY AREA MUNICIPALITIES IN RELATION TO THE FIVE INTENSIFICATION MODELS

While the official plans examined contain policy statements, they are, in most instances, so general as to be of little practical direction as policy tools for intensification activity. The primary controlling instrument is the zoning by-law of each municipality. Requirements of the Ontario Building Code (OBC) must always be complied with, which can prevent certain forms of conversion and infill regardless of how permissive zoning might be, especially with regard to set-back requirements. In addition, some municipalities have local building or housing standards by-laws over and above the OBC requirements.

Model #1 which achieves intensification with little or no physical alteration is an intensification opportunity virtually unconstrainted by zoning save for limits placed upon the number of occupants a dwelling might be permitted to contain. Municipalities have, in the past, attempted to restrict occupancy to the traditional 'extended' family by defining family in such a way as to restrict occupancy of a dwelling insofar as unrelated individuals were concerned. However, judicial consideration of this issue by the Supreme Court of Canada has determined that a valid exercise of the zoning power cannot extend beyond dealing with the matter of how many individuals may occupy a dwelling. Zoning by reference to the relationship of individuals sharing accommodation would not be permitted in various use zones of the case study municipalities. Model #1 is therefore permissable in each case study municipality subject to whatever valid limitations are placed on occupancy.

Model #2 which involves changing grade-related type dwellings from single household use to multiple household use through physical alterations (self-contained accommodation) requires examination and comparison of the broadest range of municipal regulations and the lengthy analysis required for this model provides answers for a number of other models which will be analysed later in this volume. Because of the extent and complexity of the information to be analysed, the detailed discussion of this information forms Appendices A and B of this volume. The following comments with respect to Model #2 then are a distillation of the analysis and investigation more fully set out in the appendices.

As already discussed, official plans, with rare exception, provide little more than tacit support for intensification and, then, in only the most general of language. In order to proceed with an intensification proposal such as Model #2, the regulatory environment that confronts the proponent consists primarily of the local zoning by-law, the requirements of the Ontario Building Code (OBC) and the municipal building by-law, where one exists. With the advent of the Ontario Building Code in the mid 1970's, many municipalities moved away from local building by-laws and replaced them with the uniform standards as set out in the OBC. Examples of case study municipalities which adopted this route are Kingston and Woodstock. North York, Toronto, Ottawa and Hamilton have building or local housing standards by-laws which go beyond certain of the standards contained in the Ontario Building Code.

Zoning by-laws dictate permitted uses and certain other performance standards such as lot size, parking requirements and density while the OBC and any municipal building by-laws dictate the standards of construction. Taken together, these regulations can act to prohibit conversion in all but the most limited circumstances. While all of the case study municipalities contained conversion provisions in the by-laws, the opportunities for actual conversion tends to be very limited.

Performance standards relating to such matters as minimum size of front, side and rear yards, set-backs, height, landscaped open space, minimum size dwelling unit, number of dwellings per lot and parking requirements were found to create constraints to Model #2 which varied from one case study municipality to another. Intensification activity in the form of Model #2 would conflict with single-family use designations which apply to a significant amount of the housing stock available for conversion.

'As of right' opportunities for intensification in the form of Model #2 were limited even in those areas of case study municipalities in which the conversion provisions of the respective by-laws applied. The various further performance standards relating to such matters as age of the dwelling to be converted, limitation on increases to the internal cubic content of such dwellings and restrictions on external alteration found in the conversion provisions limited opportunities for 'as of right' activity to occur in respect of Model #2.

Model #3 achieves intensification through the building of an addition, either horizontal or vertical, to achieve an increase in the number of dwelling units or through the erection of an entirely new attached dwelling unit. Opportunities for intensification in the form of Model #3 in the context of the various zoning by-laws of the case study municipalities reviewed can be described as minimal. In addition to satisfying the traditional array of restrictive performance standards already mentioned with regard to Model #2, the conversion provisions of several of the case study municipalities placed severe limitations on conversion which would require external alteration if not prohibiting it altogether. The additional zoning provisions in question relate to an apparent emphasis on the retention of the physical appearance of the dwelling which, in most cases, represents a single-family character of a neighbourhood.

Model #4 and Model #5 involve intensification by means of infill type development. Model #4 is the erection of additional dwelling units in a back or side lot configuration, while Model #5 achieves intensification by infilling new dwellings in areas of landscaped open space surrounding high-rise apartment buildings. Performance standards contained in the zoning by-laws reviewed would not, other than in the most exceptional case, permit such intensification to proceed without some review and, in most instances, without by-law amendments. Such development proposals would, in our view, rightly attract the development review process. If the development contemplated the creation of a 'lot' for purposes of sale of the unit in question, it would be necessary to seek a severence to create the lot. Such applications would require the consideration of the appropriate Committee of Adjustment or Land Division Committee.

3.0 CRITICAL ASPECTS OF MUNICIPAL BY-LAWS THAT NEED TO BE ADDRESSED TO ENCOURAGE CONVERSION ACTIVITY AS PER MODELS #2 AND #3

3.1 History of Conversion Provisions

As noted above, a somewhat surprising discovery made in the course of the study was the existence of conversion provisions in each of the zoning by-laws of the case study municipalities. Other than the recently detailed study in Thunder Bay regarding conversion which has led to amendments to both its official plan and zoning by-law, there is little evidence that intensification, as a means to a more efficient use of urban infrastructure and existing housing stock, has been the subject of serious detailed municipal policy review. Our own review did not disclose that any of the conversion provisions examined was the result of an extensive consideration of issues regarding intensifica-tion or, for that matter, were created in response to a perceived need to encourage such activity.

The conversion provisions encountered in the course of our review are, in fact, "knee jerk" reactions to conversion activity. They appeared to be enacted to limit the activity geographically, to certain types of house forms, or to array a number of performance standards as a impediment to such activity. On the basis of our review and the discussions held with key informants, we concluded that these older conversion provisions amount to attempts to maintain the community and its existing fabric by limiting opportunities for conversion in amount, appearance, location, unit size and other similar matters.

We attempted to identify the reason for the creation of existing conversion provisions in the various by-laws as a means of shedding some light on issues we might need to address in our own analysis. As already stated, nothing was uncovered which would indicate that their creation resulted from initiatives being taken to promote intensification through conversion of dwelling units. In fact, key informants were unable to shed much light at all on reasons for their existence. We were told in Hamilton that section 19 of the by-law had been in the by-law from its initial adoption in 1950. Apparently, the provision was a response to indiscrimiate conversion activity being carried out immediately subsequent to World War II when the demand for housing by those returning from overseas and the pressure of deferred family formation resulted in significant housing shortages.

In Ottawa, no light was shed on any specific reason for its conversion provision. Kingston, on the other hand, like Toronto, appears to have enacted provisions as a reaction to community concern of one form or another. The Kingston provisions are a tool used in that municipality's attempt to constrain and control conversion activity directed primarily toward the student market. Toronto's provisions are so clearly onerous and limited geographically as to compel the conclusion that Toronto strongly discourages such activity. North York's conversion provision is also severely limited in its geographic application. We were advised that, in North York in the two

areas to which the conversion provision applies, there is little or no opportunity in the housing stock for conversion to take place. Again, a rather strong discouragement to conversion activity is present.

It is on the basis of the above that the conclusion has been drawn that existing conversion provisions when found, tend to represent local decisions to restrict, if not discourage, conversion activity. This does not mean, however, that further consideration of these specific provisions is not necessary. The following discussion examines the performance criteria contained in these existing conversion provisions and identifies the issues raised by them. Their possible use and effect is commented upon in terms of a program which would promote intensification; a program which is based upon certainty.

In Appendix B the various regulatory instruments and policy statements are commented upon and in Appendix A they are set out against the five models and analyzed on an opportunity and constraint basis. In addition to testing the various performance standards in each by-law against the models, Appendix A provides further analysis on the basis of the issues which necessarily arise from inclusion of that particular performance standard as a prerequisite for conversion.

3.2 Environment Predicated on Certainty Necessary to Promote Intensification

Fundamental to the encouragement of intensification of residential neighbourhoods by conversion is the administrative environment within which this activity would occur. In all but Hamilton and Kingston, we found the areas in which intensification by conversion could occur to be extremely limited. The establishment of zoning performance standards for conversion beyond the more traditional types of general performance standards were identified as significant constraints to intensification. The severity of these zoning performance standards and, in some cases, their subjective nature would attract bureaucratic consideration of intensification proposals. The potential interest in intensification which has been identified on both the demand and supply side is acknowledged as being somewhat fragile and could easily be discouraged by a regulatory system that allows for this type of administrative discretion and judgment to be applied to some intensification proposals. We are firmly of the view that a program for intensification must encourage the adoption of amendments to local zoning and official plan statements based on certainty which will allow, as nearly as possible, a potential convertor to proceed 'as of right' without the necessity of time-consuming and expensive bureaucratic review and approval steps. The more objective the standards adopted are, the greater the certainty and, therefore, the less likely it is that potential convertors will be discouraged. We are aware of community concern over certain forms of intensification and recognize that a system containing administrative review might go some way to alleviating these concerns. In other jurisdictions, consideration has been given to the use of permit zoning procedures. The Planning Act (prior to the enactment of Bill 159), in our view, did not provide a sufficient legislative

basis for such a system. The essential ingredient to a program to promote intensification through conversion is objective and certain standards which lead to issuance of building permits without necessity of subjective administrative review.

While it is acknowledged that conversion activity may not be appropriate universally for a particular municipality, it must be emphasized that this type of conclusion can only be reached by proper analysis of the municipality itself. Other than Woodstock, which has attempted to define its prime conversion area by the area designated for R.R.A.P. funds, there was little evidence that any real attempt was made to identify areas of opportunity within the various case study municipalities as a basis for application of their particular conversion provisions. We believe it is essential for this type of physical investigation of opportunities to occur and to be clearly directed to the goals to be achieved. These goals could include for example:

- stimulting a more efficient utilization of urban infrastructure and housing stock;
- stimulating the creation of moderately priced small rental units;
- preserving the existing stock of older, larger downtown houses.

Once a municipality has identified in this rational manner the areas in which various types of intensification would be permitted, it would seem to us that, as a matter of practical and rational application, every attempt should be made to avoid the inclusion of criteria or specifications in any definition of a "converted dwelling" or a "converted dwelling unit" in the zoning by-law. Such specifications should be dealt with as conditions that have to be met to obtain a building or development permit as in the case of other forms of development.

3.3 Definitions

All but one of the by-laws examined contained a definition to describe a house which, for purposes of application of the by-law, had under gone alteration through the inclusion of a converted unit.

The Hamilton by-law defines:

> 2(2)A(iv) "Dwelling, converted" shall mean a dwelling altered from a dwelling to make a greater number of dwelling units,...

The Woodstock by-law is similar in providing:

> 2.36.7 "Converted Dwelling House", means a dwelling house which has been altered or converted to provide two or more dwelling units.

The essential ingredient in each definition is the reference to the incorporation of additional dwelling units which in turn is recognition that the accommodation being created is unitized. By this, we mean that each will have its own sanitary and culinary facilities. Without such separate

facilities, the accommodation created would be nothing more than rooms in a rooming house or boarding-type accommodation which is usually separately recognized by zoning by-laws.

Several of the by-laws had definitions incorporating specifications or criteria beyond describing the concept of what the unit is - i.e., a self-contained housing unit that is incorporated into an existing house form. For instance, in Ottawa, the definition states:

> 34V. "converted dwelling" which means an existing dwelling on an existing lot in which the number of dwelling units has been increased without alteration to the exterior of the building except for the required fire escapes, extra windows and entrances and provided that the building when converted complies with the provisions of the "building by-law" and the parking provisions of this By-law, By-Law 311-65. (emphasis added)

Each by-law, with the exception of Woodstock and Hamilton, contained an age criterion in its conversion definition. The age criterion for North York, for example, follows:

> 2.32.1 "Dwelling Converted" shall mean a dwelling more than thirty (30) years old altered to contain a greater number of dwelling units.

Once a municipality has identified through study the areas in which various types of intensification would be permitted, it would seem to us that as a matter of practical and rational application, every attempt should be made to avoid the inclusion of criteria or specifications in any defintion of a "converted dwelling" or a "converted dwelling unit" in the zoning by-law. Such specifications should be dealt with as separate performance standards to be met to obtain a building or development permit as in the case of other forms of development. For the same reason, it would also appear to us that the lack of properly drafted definitions altogether (definition by reference) is not attractive.

3.4 Constraints Based on the Age of Dwelling to be Converted

All of the case study municipalities with the exception of Woodstock had specific provisions in their by-laws relating to the minimum age of dwellings that could be converted. For example:

> 5.23 ...such dwelling was erected as a one-family dwelling before 1941; (Kingston)
>
> or in Hamilton
>
> 19. Notwithstanding anything contained in this By-law, any dwelling erected prior to the 25th day of July, A.D. 1940, may be converted so as to provide a greater number of dwelling units....

From our discussions with key municipal informants, it is apparent that these constraints were created in an attempt to direct conversion activity toward the larger, older downtown homes or to discourage new housing from being built specifically for the purpose of potential conversion. An example of newer dwellings being recognized as candidates for conversion is contained in the Toronto zoning by-law which provides:

> 2(46) (i) "converted dwelling house" means a dwelling house, originally constructed as a private detached dwelling house or one-family dwelling house, (other than row housing) which, including any addition made prior to conversion, is at least five years old,...

This type of age restriction is utilized to discourage new housing from being built specifically for the purpose of potential conversion or the misuse of conversion policies as a way to achieve two-family type development where, as a matter of stated policy, it is not encouraged.

In our opinion, age restrictions should be removed from the by-laws, letting the other performance standards in the zoning by-law direct conversion activity. If the age of the dwelling is deemed to be an important policy consideration in a particular municipality, the date to be used should be established with certainty. It must be pointed out, however, that age as a criteria could greatly reduce opportunities for conversion to occur by limiting the stock available for conversion. In particular, any form of age criteria would, by its nature, limit production of new dwellings that might be built for possible conversion and, for that matter, would remove any impetus for designing housing in ways which would facilitate conversion at some later date.

3.5 External or Physical Change

Of the six municipal by-laws reviewed, only two (Woodstock and North York) did not contain a specific constraint regarding external or physical change to the dwelling which is the subject of a proposed conversion. For instance, in the case of Ottawa, conversion could only occur

> 34V. ...without alteration to the exterior of the building except for the required fire escapes, extra windows and entrances...

Similarly, Kingston's by-law provides:

> 5.23 iv) there is no change, addition or enlargement made to the external walls or roof of the dwelling.

The City of Toronto constraint against physical alteration can be interpreted as being somewhat more flexible as is demonstrated in its conversion provisions for R1F Z2 areas:

> 6(6) (iv) no exterior addition to or major exterior alteration of the dwelling house is made and its appearance as a private detached dwelling house or semi-detached dwelling house is not materially altered.

The Hamilton provisions may also be interpreted as expressing a somewhat flexible position with respect to external alteration:

> 19. (iv) that there shall be no outside stairway other than an unenclosed fire escape:
> (v) that the external appearance and character of the dwelling is preserved;

None of the case study municipality by-laws contained a provision similar to that proposed for the City of Thunder Bay which would permit additions to a maximum of 10% increase from size of building at the date of the passage of the by-law at the rear or on the top floor of a building provided the required front and rear yard and maximum lot coverage standards were met.

The obvious intent of external physical change provisions is to maintain the existing character of an area and to ensure that the intensification activity that does occur is imperceptible to anybody other than the careful viewer. The issue of external appearance is a sensitive one and municipal officials throughout the key informant interviews consistently identified that local residents were resistant to conversion which would alter the existing character of the neighbourhood. This concern was borne out in the results of the opinion survey done as part of the overall study.

In our view, constraints on external physical change act to significantly curtail opportunities for conversion, in particular, conversions which can only be achieved (for design or Ontario Building Code reasons) through building an addition vertically or horizontally to allow a grade related dwelling to be changed from single household to multiple household use (i.e. Model #3). The erection of such self-contained accommodation is prohibited by this type of provision, other than in the case of the two municipalities with no constraint and in Hamilton, where, if one can demonstrate that the external appearance and character will be preserved, notwithstanding the addition, conversion might be permitted.

Obviously, the issue of external appearance is a sensitive one. While we are of the opinion that any series of conversion provisions should lead as frequently as possible to conversion "as of right" and site-by-site approval should be avoided to prevent unnecessary bureaucratic review with the concomitant expense in time and money on the part of the applicant, as well as on the part of the municipality, these conversion provisions at the same time, must respect the legitimate concerns of the residents. Overly subjective statements such as those found in the Toronto and Hamilton zoning by-laws, should be avoided. Provisions dealing with such matters as 'material alteration' and 'character' are vague and uncertain and can therefore easily give rise to abuse. Such provisions are nothing short of opening Pandora's box. This is not to say that external alteration/physical change cannot be adequately addressed. For example, a performance standard requiring that:

'the external appearance of the dwelling continues to resemble a private dwelling house' or, ' the dwelling house maintains its external appearance as a private detached dwelling house'

would address the concern relating to maintenance of the perceived nature of the neighbourhood while at the same time allowing the prospective converter ample flexibility to accommodate conversion through structural external alteration. Such language would be understandable and, therefore, be easily applied as a performance standard.

3.6 Specifying Unit Sizes

Several important issues are raised by specific constraints that establish minimum or maximum sizes for new dwelling units created through conversion. To properly focus these issues, reference should be had firstly to the Ontario Building Code minimum size for a unit. Subsection 9.5.3 of the O.B.C. establishes the minimum size for a unit by establishing minimum areas for the various components of a dwelling unit which when accumulated will contain a minimum of approximately 265 square feet. This would include what is described in the Code as the living, dining and bedroom spaces as well as kitchen and sanitary facilities. The O.B.C. is commonly acknowledged as consisting of building requirements to minimize the risk of injury and property damage from structural failure and fire and health hazards.

With this as a minimum, it is most interesting to note the minimum unit constraints for converted dwellings as found in zoning by-laws of the case study municipalities:

Hamilton:
19 (iii) That each of the proposed new dwelling units has a floor area of at least 65.0 square metres (699.65 square feet)...

Toronto:
6(6) (ii) The average of the dwelling areas of both or all of such dwelling units is at least 110 square metres. (iii) the area of each dwelling unit is at least 55 square metres (592.03 square feet)

Woodstock:
10.2.3.13 Dwelling Unit Area for Duplex Dwelling Housing and Converted Dwelling House Minimum 45 m^2 (484.39 square feet).

Ottawa:
39(b) (iii) (B) Each dwelling unit created has a minimum floor area of thirty-seven square metres exclusive of halls and stairwells, (398.27 square feet) and (C) the total habitable floor area in the original dwelling is one hundred and thirty (130) square metres or more before conversion.

Only North York was silent in its by-law on the issue of minimum converted unit size. All others have provisions substantially in excess of the O.B.C. minimum ranging from approximately 150% to 265% of the prescribed minimum.

Admittedly, a 265 square foot dwelling unit does not necessarily coincide with the public's notion of spacious or comfortable housing. However, the minimum unit size constraints discovered by us illustrate how such constraints can be used effectively to restrict demand for such units on the basis of affordability. By specifying an excessive minimum unit size, the converted units created can only cater to those in a position to afford this more spacious accommodation.

Traditionally, zoning and its included performance standards have been viewed as having an underlying purpose of establishing and maintaining standards within the community which enhance and preserve quality of life within it. The necessity for employment of external controls for the preservation of standards can, when the will of the community is acted upon, result in the erection of protective regulatory barriers to community change that is perceived as negative. Obviously, low to moderate income earners, the young or the single may, in many cases, be viewed as unattractive additions to a community. Larger units with their concomitant larger rents and security deposits can act as a very effective barrier to those groups. It is also possible that creation of large expensive units actually encourages occupation by groups of unrelated wage earning people as a method of cutting housing costs.

The size of the unit may also adversely impact in circumstances where the potential occupant is an "empty nester". As was pointed out in a study prepared for the American Planning Association on the issue of accessory apartments:

> Specifying that the accessory apartment be a maximum or minimum size or percentage of the total house generally implies that the home owner will stay in the larger unit. In practice, the older homeowner who wants to will move to the smaller unit. (Accessory Apartments; Hare, Patrick H.; American Planning Association; Report Number 365)

In our view, there is much to be said for an approach which avoids the specification of minimum, maximum or average units sizes whatsoever. It would seem that the OBC minimum which is predicated on the basic issues of health and safety is sufficient. Whether or not OBC minimum sized units would result can be left to traditional market forces or the specific needs of the owner-occupant.

3.7 Parking

In our initial internal discussions, the issue of parking was focussed upon as likely being the most significant individual site performance standard to be examined. Our subsequent investigation, while not supporting this view entirely, does confirm that parking is an area of concern, and that constraints have been effectively raised based on parking. It is most interesting, however, to note that the social science survey work undertaken as a part of this overall study indicated that neighbourhoods did not perceive the parking issue as critically as we may have first expected. Parking requirements as found varied greatly, but can be summarized as reflecting the

existing standard for dwelling units in a particular area. This is really not surprising given that the minimum unit sizes previously discussed would be far more likely to generate car-owning occupants than more modest units created with a view toward affordability.

The American Planning Association, in the report noted above, made the rather interesting observation that the traffic to be generated by a converted house would be unlikely to exceed that created by a household with one or two teenagers and that the real but hidden issue is the acceptance of the person who drives the car.

The issue of parking seems to be two-fold. Firstly, there is the issue of whether or not a converted unit should be required to meet the same parking standard as any other dwelling unit. Secondly, there is the issue as to where the parking is to be situated on the lot upon which the converted dwelling unit is located.

With respect to the issue of the parking standard, a significant amount of investigation and analysis was undertaken as part of the Bureau of Municipal Research study "A Case of Bachelorettes", a study of the intensive creation of small unitized dwellings in the City of Toronto. One of the major sets of recommendations of that study had to do with parking standards. Basically, it was proposed:

- that the City exercise some flexibility in parking requirements for bachelorette units
- that small units in the Central Area of the City would be adequately served by a parking requirement one-third or one-quarter of the present requirement which is basically a 1 space to 1 dwelling unit ratio;
- a study of car ownership levels be undertaken to determine realistic parking requirements outside Toronto's Central Area and to establish parking requirements for future conversions which may result in the creation of small units.

On the basis of in-depth discussions with the author of the BMR study, we are of the view that:

- any parking requirements established for converted dwelling units should be the result of a study of car ownership levels in the municipality as patterns of car ownership and availability of public transportation will vary from municipality to municipality and from neighbouorhood to neighbourhood;
- that a realistic parking requirement be developed on the basis of such parking studies for modestly sized converted units, may be as much as half that required for a standard dwelling unit; and
- that special attention should be given to the requirements of the senior citizen who may not own a car at all, and that in this regard consideration should be given to further reducing the requirement where such a potential convertor is to be an owner-occupant.

The second issue relating to parking is that of the accommodation of the care on the site. This is an extremely difficult and complex issue which really includes issues of external alteration. Again, this is an area where we believe that any requirements made should be established on the basis of informed study and, once established, should be specific so as to facilitate an "as of right" system. Basically, we believe that existing standards regarding the nature and location of parking stations are far too rigid and that creative solutions/alternatives can be found (e.g. tandem parking and front yard and back yard parking).

3.8 Maximum Unit Count

Several of the conversion provisions examined contained limitations on the number of units that could be created in a converted dwelling house. With the large minimum unit size requirements encountered, coupled with restrictions on external changes or additions and parking requirements, one might describe absolute restrictions on the number of units to be created as a degree of overkill. Nonetheless, this type of constraint was encountered in both the Hamilton and Ottawa by-laws. In the case of Hamilton, the by-law limits the number of units in a converted dwelling to three, while in Ottawa a converted dwelling is limited to not more than four dwelling units when the lot width is 12 metres or more and no more than two dwelling units when the lot width is less than 12 metres.

By-laws of other case study municipalities were silent on the issue of numbers of units or expressly provided for no maximum number. In our key informant interviews, we were able to confirm that, in these latter cases, it was felt that other constraints and performance standards, such as parking, unit size and residential density controls were appropriate and would adequately control the number of units to be created in any converted dwelling house. In our view, the issue unit count is not unlike that of unit size and we remain of the view that the issue should be determined by economics of the market place as well as standards established on the basis of health and safety.

4.0 CRITICAL ASPECTS OF MUNICIPAL BY-LAWS THAT NEED TO BE ADDRESSED TO ENCOURAGE INFILL ACTIVITY AS PER MODELS #4 and #5

As has been indicated earlier in this study, it is our view that intensifiction by conversion of existing dwellings is something that is clearly distinct from intensification brought about by infill activity. As noted, the study examined two such infill models: Model #4 would intensify existing residential development by the erection of new dwelling units in a back or side lot configuration; and Model #5 would achieve intensification by the infilling of new dwellings in areas of landscaped open space surrounding high-rise buildings.

Intensification by infill activity represents, in effect, new developmment. From our discussions with key informants, it became apparent that such 'new development' would be subject to the normal review procedures and application of traditional zoning performance standards. In our view, such 'new' activity as opposed to the modification of existing structures would rightly attract development review procedures.

However, while the nature of infill activity, in our view, would rightly attract closer scrutiny, this is not to say that the standards, e.g. constraints, identified by us in our review of the various by-laws and official plan policies are at present a satisfactory environment to encourage such activity to occur.

The primary constraints or controlling mechanisims relating to Models #4 and #5 are based on the definition of 'lot' to be found in the various zoning by-laws of the case study municipalities. In each case, the zoning by-law contained some form of constraint based upon the notion that a 'lot', as defined, would be permitted to have one dwelling house situated on it. This, of course, incorporates traditional performance criteria such as minimum lot size and frontage which are a most effective constraint to utilize in the maintenance of single family residence areas, particularly in the suburban context.

The one dwelling house per lot provisions would require that intensifiction proposals as contemplated by Models #4 and #5 proceed through consent procedures as contemplated by sections 29 and 49(3) of The Planning Act so that a new 'lot' might be created to accommodate the infill dwelling proposals.

A further constraint identified was the prohibition against the erection of a dwelling house behind another existing dwelling house. This type of 'house behind a house' development would be accommodated in older downtown areas where deep lots and laneway systems are prevalanet as well as in the suburban context where expansive lots were created for single family detached dwellings. The 'house behind a house' prohibition is usually coupled with a prohibiton against the erection or use of residential buildings where the lot upon which the building is to be erected does not abut a public highway or street assumed for public highway purposes or improved street.

All of the above constraints effectively discourage intensification by infill in other than the most limited circumstance where a new lot could be created which would meet frontage and size standards for such a lot contained in the zoning by-law and which, of course, would front on a public street of some form.

From our discussions and the experience of various consultants to the study, we are of the view that such constraints are primarily predicated on issues of health and safety. The comment most often made was that street frontage was essential to ensure access to a dwelling by emergency vehicles such as fire trucks or ambulances. Efficient allocation of municipal services such as sewer and water were mentioned along with ease of garbage collection.

While all of these concerns are valid, they appear to be in the nature of site planning issues which could be addressed through the development review process. For instance, the erection of a new dwelling in the back yard of a suburban lot might easily be accessed for emergency vehicles by a private drive located in the side yard area which access would meet standards of the local fire chief. The suggestion that 'house behind a house' provisions and the other companion constraints identified are justified on issues of health and saftey seems to us an extreme response to the concerns. The retention of such prohibitions which would necessitate severence activity with its own complexities added to development review would, in our view, likely discourage any significnt intensifiction through infilling.

In our view, municipalities which are interested in encouraging a more efficient use of infrastructure through intensification should not limit the scope of their interest to conversion activity. Opportunities by way of infill are achievable if some consideration is given to a review of zoning by-law constraints already discussed with a view to modifying them to the extent necessary to encourage infill while at the same time maintaining adequate standards for servicing of the infilled dwellings and access to it.

5.0 THE IMPACT OF THE PRESENT ONTARIO BUILDING CODE AND THE PROPOSED RENOVATION CODE ON INTENSIFICATION

The discussion in Section 7.2 of this Volume addresses the issue of zoning non-compliance but does not deal with issues of non-compliance arising from Ontario Building Code standards. In other words, even if illegally converted units were to comply with zoning requirements, legalization could be thwarted by the failure to comply with requirements of the Ontario Building Code. The draft Part 11 - Renovation Code to the Ontario Building Code may ease some of the requirements of the present Code which are directed primarily to new construction. The draft Part 11 directs itself to renovation work which we believe, in many circumstances, is fundamentally different. Although a consistency of performance standard is the goal to be achieved as between new and renovated construction, the latter requires a much greater degree of flexibility on attaining the goal. For this reason, it would seem to be appropriate to suggest greater flexibility as a matter of general application.

We are extremely concerned, however, by the possible effect of Subsection 11.1.2.1 of the Renovation Code which describes the "Eligibility" aspect of the Code as it will relate to residential renovation. Subsection 11.12.1 states that:

> 11.1.2.1 All existing buildings which have been legally occupied and used for at least five years qualify for compliance with this Part.

The issues of legal occupancy and use for five years are raised and we are most concerned that as occupancy is a matter of use and many converted units will be illegal on that basis, it is essential that this provision be clarified to ensure the relaxed standards of Part 11 are made applicable to illegally converted units.

We would therefore recommend the following:

- The draft Renovation Code - Part 11 should be brought into effect and be applicable to all existing illegally converted dwellings.

- The Chief Building Official's discretion with respect to compliance with code requirements should be sufficiently broad to allow departures from code requirements provided the life safety levels are maintained. At present, it would appear that the draft Part 11 does not contain this type of discretion and flexibility to be exercised by the Chief Building Official. Specific "Compliance Alternatives" are prescribed which could potentially result in a rigid approach to problem solving without the knowledge, ability and experience of the Chief Building Official being effectively utilized.

6.0 THE IMPACT OF PRESENT DEVELOPMENT AND BUILDING APPROVAL PROCESSES ON INTENSIFICATION

6.1 Approval Procedures For Conversion

In present circumstances, the right to intensify by converting a dwelling house has been found to be extremely limited. The levels of constraint and opportunity were identified and issues relating to them canvassed earlier. Where conversion provisions were found, they were analyzed against the models being used to test intensification potential.

In respect of the existing approval process attached to some of the existing conversion provisions, it was recognized that they required a potential convertor to provide satisfactory evidence to the municipality in respect of certain matters. Most commonly, this requirement took the form of establishing the age of the dwelling to be converted. For example, Hamilton permits the conversion of a dwelling only if the dwelling was erected prior to 1940. Another somewhat common approval requirement was with respect to ownership. In R1A districts, the by-law requires that the owner has owned the dwelling house for at least three (3) years immediately preceding alteration or conversion. Toronto also has a rather extraordinary provision dealing with marketability which requires that an owner submit conclusive evidence that the dwelling house is unmarketable, at a reasonable price, for use as a private detached dwelling house.

In the case of indicating the age of the building or that it had been owned for a specified period of time, we were informed by several key informants that the filing of a statutory declaration was sufficient.

The Toronto marketability provision, in our view is the type of subjective requirement that would present a significant constraint to any viable conversion program. What would amount to "conclusive evidence" of marketability and what would constitute a "reasonable price" for use as a single family house is so vague and uncertain as to invite the worst kind of abuse in application of the requirement and determination of its satisfaction in permitting conversion to occur. In our view, this provision may very well serve as a form of safety valve to allow the rejection of any proposal which is seen as offending the community at large regardless of its merits insofar as traditional land use requirements are concerned. It is our view that such a provision lacks the necessary certainty in law to withstand judicial scrutiny and would likely fail a test of its legality.

6.2 Proposals For Approval Process

Any program which would seek to encourage intensification will necessarily require that a minimum of time and effort be directed to site by site consideration. As was indicated in Section 4, both infill models would likely attract site specific review as well as development review procedures and we are of the view that this process can and should be avoided.

The conversion models (#'s 1-3), on the other hand, would not necessarily attract the planning approval process. Certainly, Model #1 would not even require the issuance of a building permit. Internal reorganization of space and/or enlargement by an addition would require the issuance of a permit and, as the latter is prohibited in the present conversion provisions of several of the case study municipalities, a rezoning would likely be necessary, or at the very least an application to the committee of ajdustment.

In our view, the greater the level of the bureaucratic hurdles encountered, the less the opportunity for real results to be achieved by any intensification program. For this reason, we believe that, as nearly as possible, any program should be based on an "as of right" basis for the potential convertor. The more certain the constraints are; the easier their application would be and, therefore, the more efficient the process by which private owners, small builders, or developers of scale can become involved. Conversion activity may not thrive in an environment of endless bureaucratic consideration and delay that necessarily follows.

We are aware that this view is not universally held. The American Planners Association report mentioned earlier was of the view that accessory units should be the subject of special permit procedures. "As of right" was rejected because, in their words "it makes acceptable without review what in most communities has been an unacceptable use, and does so without any provision for ongoing oversight". The APA was attempting to encourage a program emphasizing owner-occupancy as a basis for acceptability by the community. The matter of "people zoning" vs. zoning of use was recently canvassed by the Supreme Court of Canada which struck down a definition of "family" limited by ties of marriage of consangunity. Bill 159 would appear broader in application on this point and might very well provide the legislative basis for provisions requiring owner-occupancy.

The essential ingredient to a realistic program to encourage intensification by conversion is an efficient and certain procedure for the identification of potential dwellings and approval for the purpose. Anything less than criteria in the zoning by-law which can result in "as of right" determination in most cases will not encourage intensification.

7.0 THE ISSUE OF EXISTING ILLEGALLY CONVERTED DWELLINGS

7.1 Their Existence

Early on in the study process, the fact was accepted by us that there does exist, in Ontario, a rather significant number of illegally converted dwellings. These units constitute a significant input to the existing housing stock in the case study municipalities. In each of these municipalities, discussions with various key informants acknowledged the existence of these units, but, beyond that point the various views expressed regarding their presence were extremely divergent.

Specific attempts were made to ascertain some estimate of the numbers of illegal units in each of the municipalities examined, however, none of the key informants were in a position to give such estimates. This appears to be consistent with experience elsewhere, where only the vaguest estimates have been attempted of the numbers of such units.

It would appear that many of the same conditions which gave rise to the enactment of various conversion provisions in the zoning by-laws of the case study municipalities were also responsible for promoting illegal conversion. In the case of Hamilton, it would appear that demand for moderately priced accommodation immediately following World War II acted as catalyst for the creation of a stock of illegal units in proximity to that municipality's industrial areas. Kingston's active illegal conversion situation has, in a large part, resulted from the demand for university student accommodation.

In Thunder Bay, which recently completed a comprehensive review of conversion potential, existing converted housing stock was estimated, in 1980, at over 2,400 units or 22% of the rental supply. City planners in Thunder Bay further indicated that:

> "Initial research and the experience of other cities suggest well over half of these conversion units had been created without a building permit and that there may be approximately 10% (240 units) or more existing as undetected illegal suites, most notably basements."

While actual numbers of illegal units in the case study municipalities were not available, most of the planners interviewed were able to make fairly specific statements about the geographic location of such units. For instance, in North York, planners acknowledged that such units existed primarily in the western and southern districts and were attributable, in part, to a specific provision in the zoning by-law which permitted a second kitchen in the basement of a house. Apparently, this provision was incorporated in the by-law to meet the needs of a certain ethnic community that was accustomed to such facilities. Inevitably, this provision has been abused as the second kitchens, so called, have become the culinary unit of the self-contained illegally converted dwelling units.

7.2 Their Nature

In characterizing the stock of illegally converted units, there appear to be two general categories into which such units fall. Firstly, there are those units for which a building permit has not been obtained (a contravention of the present Ontario Building Code Act) and which do not conform to the existing zoning, possibly including any conversion provisions contained in the by-law. The second general category would include those units which, regardless of conformity with zoning, would not meet the present standards for construction as set out in the Ontario Building Code. It is obvious to us that there are differing levels of concern arising from whether or not such a unit simply fails to comply with performance standards of a zoning by-law or fails to meet the more fundamental considerations of health and safety contemplated by the standards contained in the Ontario Building Code or in other local building by-laws.

The distinction which has been made is an extremely important one. In our view, it is far easier to marshall arguments in favour of allowing the status quo to continue where the non-compliance is in respect of zoning performance standards rather than with requirements which have been formulated for the health, safety and protection of the occupant. Effective programs to promote conversion activity may be discouraged if one of the effects is to place in the harsh glare of enforcement for zoning and building code violations those units which have been created illegally. In current circumstances where there appears to be some consensus around the notion that these units are addressing a real housing need, promotion of a heightened environment of enforcement might prove counter-productive. The recent action of Toronto in mounting a concerted program to eradicate a particular form of illegal unit (the bachelorette) acts only to underline this concern. As was pointed out in the study prepared by the Bureau of Municipal Research reviewing the City's actions:

> "...the City's present policy aimed at the control of bachelorettes, has severely restricted the ability of the converted dwelling house to provide rental units. In light of the City's stated objectives to defend and increase where possible the amount of rental housing stock available, actions to decrease rental units (bachelorettes) and limit the amount of new rental units created seem inexplicable and contradictory."

We believe that tight enforcement of standards which could form part of a program to encourage intensification could severely hamper such a program unless the enforcement was tailored in a sensitive fashion.

The City of Toronto, in a recent report prepared by the Planning and Development Department, acknowledged, to some extent, the circumstances that gave rise to its bachelorette phenomena:

> "It has been demonstrated that present market conditions have effectively stopped the construction of new rental projects. If the private sector is to contribute to the supply of small rental units, then it is likely to occur only through the more intensive use of the existing housing stock."

The report indicates that, in fact, the trend is to the contrary and that deconversion with the loss of small, affordable rental units continues. What the City report does not go on to say, however, is that a significant number of illegal bachelorette units have disappeared as a result of its enforcement activities. The BMR study estimated a loss of over 1,000 of these small affordable units as a result of enforcement. There is no evidence that these units have been replaced and the conclusion may be made that additional pressure has been placed on the demand side for small, affordable rental units without any increase or stimulus on the supply side.

The above scenario, in our view, serves to underline the potential hazard in promoting intensification activity where the result would be heightened enforcement. Given the significant numbers of illegal units already engrained in the housing stock, there would be a real risk of a resultant overall loss in the number of housing units available.

Of course, the unchecked spread of conversions which fail to meet certain basic standards cannot be accepted as an attractive option. Failure to meet basic Ontario Building Code standards is an issue that must be addressed. Devising some method of encouraging the legalization of illegally converted units would seem essential if programs to encourage intensification activity are to be effective. Otherwise, it appears to us that, in the present regulatory environment, it would be far simpler to illegally convert.

7.3 The Present Enforcement Environment

With the exception of Toronto's bachelorette cleanup, none of the case study municipalities indicated that they had or presently have an organized program of enforcment against illegally converted units. There are two basic ways that the municipalities become involved in enforcement activity. Firstly, and perhaps most importantly, the municipality responds with enforcement of its standards where the illegally converted unit has been identified through a neighbour's complaint. Because most illegal conversions do not require any external change to the structure, they are nearly impossible to detect and come to the attention of the municipality mainly through such a complaint. As was pointed out in a recent study carried out in the United States:

> ...the general lack of complaints (from neighbours) may indicate that, at least on the short run and on the small scale, accessory apartments are the planners' equivalent of a victimless crime.

As is readily apparent, such an informal enforcement system can function quite well insofar as the local community is concerned. Wherever an illegal conversion is perceived as interfering with community standards, it will be the subject of complaint, otherwise the enforcement mechanism remains dormant.

The second way in which illegal conversions come to the attention of the municipality, and thereby subject to enforcement, is through a proposed conveyance of a converted house. The solicitor's letter to the municipality

seeking verification of the use with respect to zoning will identify a unit which has not been built in accordance with zoning or the issuance of a building permit.

7.4 Municipal Enforcement - Response

Although municipalities appear generally to refrain from active enforcement, they are obligated to take steps once an illegal conversion is brought to their attention. In several of the case study municipalities, this enforcement took the normal route of an Order to Comply being issued against the offending property owner. This will usually run its course with the offender either complying to the regulation or seeking some variance through the committee of adjustment to deal with any issue of non-compliance that is within its jurisdiction. Matters not within the jurisdiction of a committee of adjustment can only be handled through a rezoning procedure, and matters of non-compliance with the requirements of the Ontario Building Code can only be addressed before the commission established for the purpose of granting relief under the Ontario Building Code Act. As is obvious, the more complex the scenario to achieve compliance, the greater the difficulty and cost to the owner. The less the likelihood of a certain and positive resolution of the problem, the greater the disincentive to the owner to embark on its resolution.

Two of the case study municipalities tempered the procedure described above significantly by not proceeding immediately with enforcement through the Order to Comply. Rather, a more conciliatory approach was taken whereby assistance was given to the owner-offender in the form of information as to how to cure the non-compliance in the most expeditious fashion. This might take the form of a committee of adjustment application or an application to the Building Code Commission depending on the circumstances. We were informed that a co-operative owner would receive both technical and practical assistance from municipal staff in proceeding in this manner and that any formal proceedings for compliance would be held in abeyance.

Because of the apparent large numbers of illegally converted units there is some significant hesitation on our part to promote the concept of intensification, and particularly conversion activities, for fear such encouragement might result in the net loss of housing stock through the loss of illegally converted units due to heightened enforcement. However, in order to successfully promote intensification activity, a program of redefined and relaxed regulations and performance standards will not suffice to encourage all of the present illegal stock to be brought forward for legalization. On the other hand, a simple blind-eye approach leaving enforcement to its present ad hoc informality would not seem to be compatible with a positive intensification program from a policy point of view. Devising some method of encouraging the legalization of illegally converted units would seem essential if programs to encourage intensification are to be effective. Otherwise, as previously stated it appears to us that in the present regulaltory environment it would be far simpler to illegally convert.

There are several possibilities which, in our view, should be given serious consideration. They are:

- a general amnesty for all illegally converted dwellings where matters of zoning are concerned;

- short of a general amnesty, a selective relaxation of various performaance standards such as density, parking, or prohibitions against external appearance, etc.;

- relaxing the prohibition against habitation in units which have been located below grade in "cellars" and "basements" as defined in the various zoning by-laws reviewed. Other than the issue of flooding which could be dealt with on a local basis, it would seem that this prohibition against habitation below grade is no longer relevant and has been more than adequately handled by requirements for adequate natural light and mechanical ventilation to be found in the standards of the Ontario Building Code or local building by-laws;

- an amendment to the Planning Act to ensure that adequate statutory direction is given to committees of adjustment in exercising their discretion to permit minor variances from by-law requirements. The present language of section 42 provides some concern to committee members and this concern is not assuaged by judicial comments on the exercise of this discretion. Consideration should be given to amending the Act to clarify the test to be applied by the committee to an application requesting approval for a "minor variance". The test to be applied by the committee to a minor variance application pursuant to Section 42(1) (a) of the Planning Act contains four requirements that must be addressed and the Committee must be satisfied in regard to all of them:

  1. The variance requested must be a minor variance from the provisions of the by-law.

  2. The variance must be for an appropriate development or use of the land, building or structure.

  3. The variance must comply with the general intent and purpose of the by-law.

  4. The variance must comply with the general, intent and purpose of the official plan, if any.

In order to grant the variance requested in the application, the committee must be satisfied that, in its opinion, all four requirements are met. To disallow the application, it need find that only one requirement is not satisfied (Re 251555 Projects Ltd. and Marrison (1974) 5 OR (2d)763).

This test, we suggest, should be replaced with a test that addresses the following: How would the proposed variance affect the existing land use in question? It is of general amnesty, to deem all illegally converted units which are within five to ten percent of compliance with the performance standards to be complying for purposes of zoning, thereby eliminating a group of the least objectionable units from any review process.

APPENDIX A

MUNICIPAL CONTROLS

APPENDIX A: MUNICIPAL CONTROLS

This appendix contains the provisions within the official plans and zoning by-laws for the study municipalities that relate to conversion for Models 2, 3, 4 and 5. Conversion per Model 1 involves no physical changes to the structure of the dwelling and the discussion contained in the body of the report fully covers it.

A.1 MODEL 2

("Changing grade-related type dwellings from single household use to multiple household use through physical alterations (self-contained accommodation).")

A.1.1 Kingston

Official Plan

NOTE:
Official plans, in the large majority of examples, contain statements that are general in nature, instead of specific. These general policy statements are the basis upon which the specific provisions of the municipalities' zoning by-laws are established.

In reading the statements contained in official plans, the reader often has to exercise judgment as to whether any particular statement is supportive, neutral or discouraging in relation to the use under consideration.

The general policy statement contained in Section 1 (8) can be used to support conversion as in Model 2 on a city wide basis:

1(8) Housing

> "It is the policy of council to determine periodically the housing needs of the population and to stimulate the building of such units to provide the population with sanitary, safe and sound habitation."

A specific strongly supportive statement is contained in Section 1(15) regarding the conversion of stables, etcetera. This statement would be useful in a conversion programme including Model 2 type conversions:

1(15) "it shall be the policy of council to consider the conversion of a stable, coach house or out building in the residential area to a place of residence subject to development control and provided that the use generally conforms to the residential standards set out in the zoning by-law for that particular area."

Section 1(30) contains a serious constraint prohibiting conversion in designated "Areas of Constraint":

1(30) "While not all places in areas of habitation are the most desirable or best located, there are large groups of dwellings in neighbourhoods that are identified as Areas of Stability in this Plan as defined in section 2(20).

It shall be the policy of council to preserve and protect these areas so that no basic changes will be made through zoning or other public action which is out of keeping with the character of the areas for a period which may range up to 20 years. Repairs, maintenance and some enlargements but not conversions, will be permitted to uses lawfully existing."

Zoning By-Law (ByLaw No. 8499)

Definition: The by-law does not contain a definition of "converted dwelling."

Zone or District Specific Requirements

Sections 5.23 and 5.23(A) are intended to completely deal with the subject of converted dwellings and accordingly the conditions prerequisite are set out therein, including permitted geographic zones, age of structure, parking, limits on external change, bedroom ratio, and minimum floor areas:

5.23 Conversions of a One-Family Dwelling to a Multiple Family Dwelling

Notwithstanding any provision or regulation of this by-law, a one-family

dwelling only may be converted to a use containing a greater number of self-contained dwelling units under the following conditions:

(i) such a dwelling is located in zones A, A1, A2, A3, A4, A5, B, E, or C; (By-Law No. 8499-1975)

(ii) such dwelling was erected as a one-family dwelling before 1941 12 01, (By-Law No. 8499-1975; 79-174-1979);

(iii) parking spaces are provided in accordance with Section 5.3 of this by-law;

(iv) there is no change, addition or enlargement made to the external walls or roof of the dwelling;

(v) a ratio of dwelling units with one or more separate bedrooms to dwelling units with no separate bedroom shall be provided in a minimum ratio of 3:1, (By-Law No. 8499-1975);

(vi) each dwelling unit has at least the total floor area in relation to the number of bedrooms set forth in the following table:

0 - 28 sm (square metres)
1 - 42 sm
2 - 56 sm
3 - 70 sm
4 - 79 sm
5 - 79 plus 9 for each bedroom after 4.

minimum total floor area = 232 sm

Section 5.23(A) is a recent amendment to the zoning by-law and is meant to be more constraining according to information from local officials:

5.23(A) Conversion of a One-Family Dwelling to a Two-Family Dwelling

Notwithstanding any provision or regulation of this by-law,

a one-family dwelling only may be converted to a two-family dwelling under the following conditions.

(i) such a dwelling is located in Zones A, B, or E;

(ii) parking spaces are provided in accordance with Section 5.3 of this by-law;

(iii) there shall be not more than $19m^2$ of floor space added to the dwelling;

(iv) the roof of the dwelling may be altered in order to provide for light and air, however, in no case shall such roof alteration or enlargement amount to more than 10 per cent of the roof area:

(NOTE: Dwelling unit size is governed by the chart in 5.23 (vi) above.)

General By-Law Requirements

Conversions in compliance with Section 5.23 or 5.23(A) are exempt from general by-law requirements (relating to such matters as set-backs, lot frontage, and height) due to the "notwithstanding" clause contained in the lead-in words to Sections 5.23 and 5.23(A).

If a conversion is not within Section 5.23 or 5.23(A) then application must be made to the Committee of Adjustment for a minor variance, or if the variance is not minor, a re-zoning application must be made.

Dwellings Below Grade

Permitted in basements (more than 50% above ground level), not permitted in cellars (more than 50% below ground level).

Parking

5.3A(b)(ii)(c)

One parking space shall be provided for each two dwelling units in a building which

is converted into a total of not more than four dwelling units (including the original unit or units) and one parking space is provided for for each dwelling unit in a building which is converted into five or more dwelling units (including the original unit or units) and where the parking area is not provided within an enclosed building it shall be situated either

(1) in the rear yard of the lot as inconspicuously as the design and layout of the building and the lot permit; or (By-Law No. 8499-1975);

(2) in an adjacent or neighbouring lot not more than 60.0 m from the building lot.

A.1.2 Hamilton

Official Plan

The general statements contained in Sections A.2.1 and A.2.8 can be used to support conversion in Model 2 form on a City wide basis:

A.2.1 - Residential Uses

"It is the intent of this plan to ensure that the Residential Use of land is sufficient to accommodate anticipated population growth and changing demands for RESIDENTIAL development of varied styles and densities while ensuring the maintenance of amenities for residents."

2.1.8 "it is the intent of council that a variety of housing styles, types and densities be available in all RESIDENTIAL areas of the City,..."

Statements contained in Subsection C.7 - Residential Environment and Housing Policy, are more specifically aimed at conversion (and infill) then those in Section A.2.1:

SUBSECTION C.7 - RESIDENTIAL ENVIRONMENT AND HOUSING POLICY

It is the general intent of this Plan to promote a high standard of RESIDENTIAL and urban amenity

and the provision of an ample and varied supply of dwelling types to cater to the needs of all income groups. While it is expected that single-family housing will continue to be the dominant housing requirement, a latent demand for multiple-family housing is recognized. In providing for these demands, an amenable mixture of densities and an arrangement that will minimize conflicts between different forms of housing is desired.

7.1 In the development of new RESIDENTIAL areas and, as far as practicable, in the infilling or redevelopment of established areas, Council may undertake or require the following in order to achieve high standards of RESIDENTIAL amenity:...

v) Provision of advice and assistance in the improvement and maintenance of private dwellings;

vi) Investigation into, and application of, other methods of encouraging the maintenance and improvements of buildings in RESIDENTIAL areas;...

viii) Other similar actions or matters as Council may deem appropriate.

7.3 Council will ensure that the local RESIDENTIAL ENVIRONMENT is of a condition and variety satisfactory to meet the changing needs of area residents. Accordingly, Council will:

i) Encourage the maintenance of RESIDENTIAL properties subject to the provisions of Subsection C.5;

ii) Promote the restoration and/or rehabilitation of housing structures exhibiting Architectural or Historical merit, subject to the provisions of Subsection C.6;

iii) Encourage RESIDENTIAL development that provides a range of types and tenure to satisfy the needs of the residents at densities and scales compatible with the established development pattern;...

vi) Encourage the rehabilitation of dwellings as an alternative to demolition in appropriate locations and instances, having regard to the preservation and maintenance of the amenity of the RESIDENTIAL area; and,

vii) Encourage development at densities conducive to the operation of Public Transit and which utilizes designs or construction that are energy efficient.

The Official Plan contains a strong deterrant to conversion for residential purposes in Section 2.1.7 which applies to existing house-form structures:

2.1.7 In order to preserve and utilize older buildings no longer appropriate for RESIDENTIAL USE and to provide a specialty type of commercial service in proximity of the central area of the City, council may permit the conversion of existing RESIDENTIAL buildings located in high density RESIDENTIAL areas for commercial uses such as financial offices, as may be identified through the preparation of neighbourhood plans."

Zoning By-Law (By-Law No. 6593)

Definition: 2(2) A(iv) "Dwelling, converted" shall mean a dwelling altered from a dwelling to make a greater number of dwelling units, or in a district where permitted a multiple dwelling altered from a dwelling.

Zone or District Specific Requirements

Section 19 of the by-law is intended to completely deal with converted dwellings. Such matters are dealt with as age, limitation on internal increase in cubic contents, minimum size, limitations on external change, number of units by zoning district and lot size, parking and front, side and rear yard requirements for additions:

19 Notwithstanding anything contained in this By-law, any dwelling erected prior to the 25th day of July, A.D. 1940, may be converted so as to provide a greater number of dwelling units, provided that all the following stipulations are complied with, namely:
(3138/57) (6801/51)...

(ii) that in a residential district in which no dwellings except single-family dwellings are permitted, there shall be no increase in the cubic contents of any dwelling; (9438/61) (6801/51)

(iii) that each of the proposed new dwelling units has a floor area of at least 65.0 square metres (699.65 square feet), including common halls and stairways, but excluding the area of the cellar, if any, and of any porch, verandah or other such space which cannot lawfully be used as living quarters; (6801/51) (79-288)

(iv) that there shall be no outside stairway other than an unenclosed fire escape; (6801/51)

(v) that the external appearance and character of the dwelling is preserved; (6801/51)

(vi) that in a residential district in which no dwellings are permitted except single-family dwellings, and on a lot having an area of at least 270.0 square metres (2,906.26 square feet), there may be provided two dwelling units; (9438/61) (6801/51) (79-288)

(vii) that in a D district there shall be provided a total of not more than three dwelling units, and that the area of the lot is at least 270.0 square metres (2,906.26 square feet); and (6801/51) (79-288)

(viii) that in any district except one in which no dwellings are permitted but single-family dwellings and two-family dwellings, the number of dwelling units may be increased to three, in a dwelling on a lot having an area of at least 270.0 square metres (2,906.26 square feet), and may be increased to a greater number than three, in a dwelling on a lot having an area of at least 450.0 square metres (4,843.76 square feet), provided further that in no case shall there be less than 65.0 square metres (699.65 square feet) of lot area for each dwelling unit, except in the case of a dwelling unit in which the only rooms are the bathroom, kitchen and living room, the last of which contains the sleeping accommodation, in

which case the required lot area may be reduced to 37.0 square metres (398.26 square feet) (6801/51) (9438/61) (79-288)

(ix) that there are parking spaces and manoeuvring space and access driveways provided in accordance with the requirements for converted dwellings as set forth in sub-section 3 of section 18, and (8175/58) (8158/57)

(x) that front yards, side yards and rear yards are provided in accordance with the provisions applicable to the district in which the lot is included, upon which the proposed converted dwelling is situate, for any addition or enlargement as permitted above. (8175) (8158/57)

General By-Law Requirements

Due to the "notwithstanding" clause contained in the lead-in words to Section 19, conversions which meet the conditions are exempt from general by-law requirements, except for additions and enlargements which must comply with yard set-backs pursuant to Section 19(x). Conversions not meeting the conditions in Section 19 must be approved by Committee of Adjustment if the variance is minor, and if not the conversion will be the subject of a re-zoning.

Dwellings Below Grade

The zoning by-law is silent. The local building by-law permits dwellings in basements but not in cellars.

Parking

Section 19(ix) (see above) requires parking for converted dwellings in accord with Section 18(3) which requires the following: 1 parking space per unit unless the dwelling is a "multiple dwelling" as defined, which is generally one containing more than 4 units in which case parking spaces may be reduced to 80% of the number of dwelling units. No parking may be located in a required front yard (Section 18(3)(iv)(ad).

A.1.3 Toronto

Official Plan

The Official Plan contains a number of general statements that can be utilized as general support for conversion on a city wide basis although they are by no means a set of specific policy tools:

2A.1 The housing goals of Council are:

(a) the provision of decent housing to all residents in a suitable living environment at prices which they can afford;

(b) the equitable distribution of housing to meet the needs of identified target income groups;

(c) the preservation and improvement of existing housing and existing residence areas; and

(d) the provision of housing which is accessible to and meets the needs of the handicapped and the elderly.

2A.3 Council, from time to time, will prepare and adopt housing policy statements. Such statements will establish a program of short-term housing production targets and allocations, and shall include:

(a) annual targets for the repair and rehabilitation of existing housing;

(c) annual targets for the acquisition and improvement of existing housing;

(e) annual targets for the production and provision of housing for various household types and sizes including housing suitable for families with children;

(f) annual targets for the production and provision of housing for individuals and families of low-to-moderate income, senior citizens, and the handicapped;

2A.8 (a) In order to achieve the goals and targets of its long- and short-term housing policies, Council may acquire land and/or buildings in any area of the City for housing purposes, either directly or through its housing corporation.

2A.13 It is the policy of Council to seek a balance between owner-occupied and rental housing within the City, and in particular areas of the City.

1.1 (b) Council's policy is to improve the efficiency, amenity and appearance of the various parts of the City as may be

appropriate for each area so that the City shall be an efficient and enjoyable place in which to live.

(c) The distinctive character of the different parts of the City, and the prominence and attractiveness of its main focal points, will be maintained and enhanced.

For the purposes of encouraging provision of housing for people of low-to-moderate income, section 2A.9 supports conversion by Council itself:

2A.9 It is the policy of Council to take direct action to ensure that in short- and long-term assisted housing targets are met and to the extent that those targets cannot be met by other producers and programs, Council, either directly or through its housing corporation, will:

(a) produce new housing for individuals and families of low-to-moderate income; and

(b) acquire, improve and/or convert existing houses for individuals and families of low-to-moderate income.

Zoning By-Law (By-Law No. 20623)

The zoning by-law for the City of Toronto is, at the time of writing, undergoing certain relevant amendments. A series of by-laws, known as the 321-78, 501-81 series, have been approved by Council and were before the Ontario Municipal Board commencing April 14, 1983, with the hearing complete but the final decision reserved, as of May 9, 1983. The existing relevant by-law provisions and the proposed amendments are set out below.

Definition: (i) "converted dwelling house" means a one-family dwelling house including any addition thereto, which has been or is proposed to be altered or converted so as to provide therein two or more dwelling units; (R2) (20870 and 21042)

Definition: (i) "converted dwelling house" means a dwelling house, originally constructed as a private detached dwelling house or one family dwelling house, (other than row housing) which, including any addition made prior to conversion, is at least five years old, which has been or is proposed to be altered or converted so as to provide therein two or more dwelling units; (R2) (20870) (21042) (321-78) (307-79) (501-81)
(NOTE: This will replace the existing definition)

(p) "converted dwelling and lodging house" means a dwelling house, originally constructed as a private detached dwelling house, or a one-family dwelling house (other than row housing), which, including any addition made prior to conversion, is at least five years old, which has been or is proposed to be altered or converted so as to provide therein two or more dwelling units and one or more boarding or lodging rooms;
(321-78) (307-79) (501-81)

NOTE: Different zoning areas have different conditions for converted dwellings which are laid out below.

R1 Districts

The R1 zoning area contains a geographically defined sub-area where converted dwelling use is permitted. This sub-area coincides with the area known as Rosedale. The conditions cover such matters as age, minimum size of resulting units, limitations on exterior alterations and change of exterior appearance.

6(6)(i) the dwelling house is at least twenty (20) years old;

(ii) the average of the dwelling areas of both or all of such dwelling units is at least 110 square metres;

(iii) the area of each dwelling unit is at least 55 square metres; and

(iv) no exterior addition to or major exterior alteration of the dwelling house is made and its external appearance as a private detached dwelling house or semi-detached dwelling house in not materially altered.

6(7) Notwithstanding the provisions of subsection (1), the owner of a dwelling house erected within the portion of the area referred to in subsection (6) which is at least twenty years old may vertically divide such dwelling house so as to create a pair of semi-detached dwelling houses, notwithstanding that the dwelling houses created by such vertical division and any existing accessory building or structure do not comply with Section 4 (other than subsection (13) of Section 4), provided any addition to be erected complies with Section 4 and is not erected to the front or sides of such dwelling house. (377-80) (256-81)

R1A and R1F Districts

The conditions cover such matters as age, ownership, unmarketability, minimum size and limitations on exterior alterations.

Sections 7(2) and 7A(3) Notwithstanding the provisions of subsection (1), the owner of a private detached dwelling house may alter or convert such dwelling house, so as to provide therein two (2) or more dwelling units provided:

(i) he has been the owner of the dwelling house for at lease three (3) years immediately preceding alteration or conversions;

(ii) the dwelling house is at least forty (40) years old and contains a gross floor area of at least 280 square metres;

(iii) he submits conclusive evidence that the dwelling house is unmarketable, at a reasonable price, for use as a private detached dwelling house;

(iv) each dwelling unit has a floor space of not less than 55 square metres, except in the case of an attic where the permissible floor area shall be not less than 42 square metres; and

(v) no exterior addition to or major exterior alteration of the dwelling house is made and its external appearance as a private detached dwelling house is not materially altered; (21829)

Notwithstanding the provisions of subsections (1) and (2), the owner of a private detached dwelling house may alter or convert such dwelling house so as to provide therein two or more dwelling units provided the dwelling house is at least forty (40) years old and contains a gross floor area of at least 460 square metres, and provided the requirements of (iii), (iv) and (v) of subsection (2) are complied with; (21829)

R2 Districts (Section 8(3); R3 Districts (Section 9(4)(9); R4 Districts (Section 10(4)(5) and R4A Districts (Section 11 (3)(4)

The existing by-law refers to "Converted Dwelling and Lodging Houses". The proposed by-law provisions will be in addition to the existing conditions:

CONVERTED DWELLING AND LODGING HOUSES

8(3) Subject to the provisions of paragraph (a) of this subsection, none of the provisions of this Section shall apply to prevent the use of any private detached dwelling house, one-family dwelling house or semi-detached dwelling house in any R2 district as a boarding or lodging house subject to the following conditions:

(i) the owner or bona fide tenant of the boarding or lodging house shall occupy therein as his permanent personal residence a dwelling area of not less than 37 square metres plus 7 square metres for each person in the family of the owner or tenant in excess of two (2);

(ii) no room in the boarding or lodging house shall be let as sleeping accommodation unless the area thereof is sufficient to provide at least 9 square metres for a single occupant or 7 square metres for each one of two or more occupants;

(iii) no sign which is visible from the exterior of the boarding or lodging house shall be displayed;

(iv) no cooking equipment shall be permitted in any room used for sleeping purposes;

(v) running water toilets, wash basins and baths or showers shall be provided on the basis of one each for every six (6) occupants of the boarding or lodging house;

(vi) the boarding house or lodging house and the lot upon which it is located, as well as every accessory building, shall at all times be maintained in a clean and orderly condition as to such things and matters as paint, window sills, yards and lawns;

THESE PROPOSALS WILL BE INCORPORATED INTO SECTION 8(3) FOLLOWING 8(3)(vi) AS INDICATED HEREIN.

CONVERTED DWELLING AND LODGING HOUSES
R2, R3, R4, R4A Districts) (Proposed)

(vii) there is no substantial change in the external appearance of such dwelling house as a one-family dwelling house and there is no exterior alteration or addition to such dwelling house except, subject to the other requirements of this by-law:

(a) an addition to any part (other than to that side of the dwelling house facing the fronting street, and, in the case of a corner lot, other than to that side of the dwelling house facing the flanking street) of the exterior of any of the above classes of dwelling houses, provided the increase in gross floor area does not exceed 0.15 times the area of the lot;

For greater certainty only one addition may be erected either at the time of conversion or thereafter.

(b) (i) a porch or verandah addition where none previously existed, (including a basement extension located wholly beneath such porch or verandah addition), not exceeding 3.7 metres in height above grade extending beyond a distance of 2.4 metres from the wall to which it is attached;

(ii) a porch or verandah replacement (which may include a basement extension located wholly beneath such porch or verandah replacement) to the dimensions of the original structure save as hereinafter set out, provided, however, that where the original structure was less than 2.4 metres in depth from the wall to which it was attached, such replacement may extend in depth to a maximum of 3.7 metres from the wall to which it is attached, and further provided that in no case may any replacement two storeys in height above grade notwithstanding the height above grade of the original porch or verandah being replaced.

(c) a dormer or dormers in the roof of such dwelling house, provided that the floor area of each dormer does not exceed 2.3 square metres and the total floor area of all such dormers does not exceed 9.3 square metres, such increase in floor area to be included in the gross floor area limitation referred to in sub-clause (a):

For greater certainty the dormer or dormers referred to in this sub-clause may be constructed from time to time provided the provisions of this sub-clause are complied with.

(d) any alteration or renovation as may be required from time to time to any such dwelling house that is or is proposed to be used as a boarding or lodging house or converted dwelling and lodging house under the provisions of the Ontario Building Code, By-Law No. 300-68 or By-Law No. 73-68, as amended. (321-78) (307-79)

(viii) the semi-detached dwelling house is attached to a semi-detached dwelling house that is being converted to or has been converted to and used as a boarding or lodging house or a converted dwelling and lodging house.

Where a semi-detached dwelling house used as a boarding or lodging house or a converted dwelling and lodging house is converted to use as a one-family dwelling house, nothing in this subsection shall prevent the continued use of the semi-detached dwelling house to which it is attached as a boarding or lodging house or a converted dwelling and lodging house, as long as it continues to be used for that purpose. (321-78)

(viii) the average of the floor areas of the dwelling units in any building being altered, converted or used as a converted dwelling and lodging house must be not less than 33 square metres; (501-81)

Notwithstanding the foregoing, no person shall in any R2 district use any private detached dwelling house, one-family dwelling house or semi-detached dwelling house for the purpose of a boarding or lodging house or a converted dwelling and lodging house if such boarding or lodging house or converted dwelling and lodging house contains more than six (6) boarding or lodging rooms (321-78) (76-81)

(a) This subsection shall not apply to any private detached dwelling house, one-family dwelling house or semi-detached dwelling house.

(i) in any R2 district in the portion of the City lying north of the Belt Line Railway;

(ii) in any R2 district in the portion of the City bounded on the north by the Belt Line Railway, on the east by Yonge Street, on the south by St. Clair Avenue West and on the west by Avenue Road, Lonsdale Road and Oriole Parkway;

(iii) on any land abutting on Whitehall Road; (48-70)

(iv) on any land abutting on Summerhill Gardens. (110-74)

8(3A) Subsection (3) shall not apply to any private detached dwelling house, one-family dwelling house or semi-detached dwelling house which is not at least five (5) years old. (296-68)

CONVERTED DWELLING HOUSE (Proposed)

The proposed series of by-laws, if approved, will provide conditions to be met by converted dwellings in R2, R3, R4 and R4A Districts. Such matters are dealt with as limitations on external change, average floor areas and age:

8(9) None of the provisions of subsection (1) of the Section shall apply to prevent the use of any building or structure that is or was originally constructed as a private detached dwelling house, one-family dwelling house (other than "row housing") or semi-detached dwelling house as a converted dwelling house provided there is no substantial change in the external appearance of such dwelling house as a one-family dwelling house and there is no exterior alteration of or addition to such dwelling house except, subject to the other requirements of this by-law: (501-81)

(a) an addition to any part (other than to that side of the dwelling house facing the fronting street, and, in the case of a corner lot, other than to that side of the dwelling house facing the flanking street) of the exterior of any of the above classes of dwelling houses, provided the increase in gross floor area does not exceed 0.15 times the area of the lot;

For greater certainty only one addition may be erected either at the time of conversion or thereafter.

(b) (i) a porch or verandah addition where non previously existed, (including a basement extension located wholly beneath such porch or verandah addition), not exceeding 3.7 metres in height above grade or extending beyond a distance of 2.4 metres from the wall to which it is attached;

(ii) a porch or verandah replacement (which may include a basement extension located wholly beneath such porch or verandah replacement) to the dimensions of the original structure, save as hereinafter set out, provided, however, that where the original structure was less than 2.4 metres in depth from the wall to which it was attached, such replacement may extend in depth to a maximum of 2.4 metres from the wall to which it is attached, and further provided that in no case may any replacement two storeys in height above grade notwithstanding the height above grade of the original porch or verandah being replaced.

(c) a dormer or dormers in the roof of such dwelling house, provided that the floor area of each dormer does not exceed 2.3 square metres and the total floor area of all

such dormers does not exceed 9.3 square metres, such increase in floor area to be included in the gross floor area limitation referred to in paragraph (a);

For greater certainty the dormer or dormers referred to in this paragraph may be constructed from time to time provided the provisions of this paragraph are complied with.

(d) any alteration or renovation as may be required from time to time to any such dwelling house that is or is proposed to be used as a converted dwelling house under the provisions of the Ontario Building Code, By-Law No. 300-68 or By-Law No. 73-68, as amended (307-79)

(e) the average of the floor areas of the "dwelling units" in any building being altered, converted or used as a converted dwelling house containing more than two dwelling units, must be not less than 65 square metres. (501-81)

(f) none of the provisions of subsections (1) and (9) of this Section shall apply to prevent the conversion and use of the one-family dwelling house known municipally in the year 1980 as No. 64 Glenlake Avenue as a converted dwelling house containing two dwelling units. (816-80) (501-81)

This subsection shall not apply to permit the conversion of any building or "dwelling house" therein referred to unless the whole of the "dwelling house" or building as it stands prior to conversion is at least five years old. (501-81)

C1 and CR Districts

"Converted dwelling and lodging houses" and "converted dwelling" are permitted uses in these districts with no conditions particular to converted uses beyond those contained in the definitions.

Due to the definitions of "residential building" and "mixed-use building" in section 4 (12(0)(vii) and (viii) it is likely that converted residential uses in CR districts are caught in the "Setback & Coverage; Recreation Space and Common Outdoor Space" requirements.

General By-Law Requirements

All conversions must comply with the general requirements of the By-Law as set out in Section 4: GENERAL PROVISIONS relating to such matters as set-backs, lot size, frontage, height and width. The only exemption from Section 4 requirements is contained in Section 6(7) re: R1 districts (See above).

Dwellings Below Grade

The by-law contains no prohibition except for two apparently anomalous exceptions in Section 4(18)(a) and (b) which prohibit more than one sub-grade level of dwelling units, and which prohibit sub-grade dwellings in duplexes:

> 4(18)(a) Subject to the provisions of paragraph (b), no person shall, in any R, CR or QR district, erect or use any building or structure having more than one basement or floor level below or partly below grade containing dwelling units;
>
> (b) No person shall, in any R, CR or QR district use for the purpose of a dwelling unit or living quarters, any portion of a duplex dwelling house or double duplex dwelling house the floor level of which portion is below or partly below the level of the first floor of the duplex dwelling house or double duplex dwelling house (21295) (831-78)

Parking

Section 4(13) requires 1 parking space for each unit in a place of residence. For a "boarding or lodging house", 1 parking space is required for each 6 bedrooms or fraction thereof.

Section 4(13)(e) prohibits parking in front of the main wall of a residential building except for casual (i.e. visitor) use on a paved driveway.

Parking (Proposed)

The parking requirements as proposed for "converted dwelling house" is more lenient than at present:

a converted dwelling house (321-78)	1 parking space for the first dwelling unit where such parking space existed on the lot prior to conversion, plus 1 parking space for each dwelling unit in excess of the first 2 dwelling units.

The parking requirements as proposed for "a converted dwelling and lodging house" is more constraining than at present:

a boarding or lodging house or a converted dwelling and lodging house (430-75) (321-78)	1 parking space for each 3 boarding or lodging rooms or fraction thereof in excess of 3; 1 parking space for each 2 dwelling units, or fraction thereof.

A.1.4 Woodstock

Official Plan

The Official Plan for the Oxford Planning Area contains the official plan for Woodstock.

Section 4: General Development Policies contain some general statements that could be construed to support conversion, while Section 4.4.5 contains statements to either prohibit conversion or to encourage it:

4.2.1 General

"the county and area municipalities shall attempt to stimulate the provision of sufficient units of safe, sanitary and sound housing to meet the projected increase of the county's population during the planning period. In addition, the county and area municipalities shall adopt measures to encourage the provision of housing and a variety of types, sizes, densities and styles with varying lot frontages and lot sizes, in an attempt to accommodate the differing needs, aspirations and lifestyles of the residents of the County of Oxford."

4.2.2 Specific Measures

"in order to obtain the goals set out in section 4.2.1 the county and/or the area municipalities shall investigate and consider specific policies which may include the following:

4.2.2.7 "the development of a program directed toward the conservation, rehabilitation or redevelopment of the older established residential areas."

4.4.5 "with regard to designated historic sites and buildings, the County council and/or area councils may:...

-prohibit the conversion of structures to uses other than those presently existing and shall not allow additions or alterations to structures which may detract from the architectural or historical value of the properties;

> -encourage the redevelopment or recycling of designated historical buildings to uses compatible with the historical buildings to uses compatible with the historical or architectural character of the buildings;
>
> -encourage the preservation of historic sites and buildings;...

The City of Woodstock is dealt with specifically in Section 5.11.2 "Large Urban Growth Policy Area - City of Woodstock". The statement is too general to be of real use for conversions:

> 5.11.2 "Within the residential classification of land, the predominant uses shall be for all forms of residential development including low density single family dwellings, medium and high density multiple family dwellings. ..."

Zoning By-Law (By-Law No. 5899/81)

Definition: 2.36.7 "CONVERTED DWELLING HOUSE", means a dwelling house which has been altered or converted to provide two or more dwelling units.

Zone or District Specific Requirements

The zoning by-law, recently adopted, sets out conditions for conversion of dwellings for each of the residential areas where permitted, which is virtually all of the residential areas of the City. The charts are too detailed to set out here, and reference should be made to the by-law, Sections 10.2.3 and 12.2.

In summary: There are no age requirements for the dwelling proposed for conversion. The by-law is silent regarding limitations on external change, with the exception that additions must comply with yard set-back requirements (Sections 10.2.3 and 12.2). Such matters are covered as set-backs, parking lot coverage, frontage, area, depth, landscaped open space, height, number of converted dwelling houses per lot, and dwelling unit area.

General By-Law Requirements

The general requirements do not apply to converted dwellings, except for parking.

Dwellings Below Grade

Section 6.3 states that entire dwelling units are permitted in some basements, but not in cellars. Those parts of dwelling units located in cellars may only be put to limited use and cannot be used for sleeping.

Parking

Section 6.9.1 requires 1 parking space per dwelling unit in a converted dwelling house. The location of the parking space on the lot is to be per Section 6.9.13:

6.9.13 PARKING AREA LOCATION ON LOT

Notwithstanding the yard and set-back provisions of this By-Law to the contrary, uncovered surface parking areas shall be permitted in the required yards or in the area between the street line and the required set-back as follows:

ZONE	YARDS IN WHICH REQUIRED PARKING AREA PERMITTED
Residential	All yards provided that no part of any parking area, other than a driveway, is located closer than 1.0 metre to any street line. A parking area for residential units with individual private driveways may be located abutting the street line provided that not more than 50% of the required front yard is used for driveways and parkings areas.

A.1.5 North York

Official Plan

Due to the area and use specific approach of the Official Plan, and the rigidity of the zoning by-law, together with the limited areas where converted use is permitted, conversion of any type is virtually prohibited in North York.

Zoning By-Law (By-Law No. 7625)

Definition: 2.32.1 "Dwelling converted" shall mean a dwelling more than thirty (30) years old altered to contain a greater number of dwelling units."

Zone or District Specific Requirements

Converted dwellings are permitted only in the RM3 (Residential Multiple) and RM4 districts which characteristically contain apartment buildings and little, if any, suitable stock in house form.

General By-Law Requirements

No variations are permitted to the coverage, yard set-backs and frontage requirements:

> No person shall reduce any lot built upon in area, either by the conveyance or alienation of any portion thereof or otherwise, so that the coverage will exceed the maximum permitted by this By-Law, and the yards provided will be less than the minimum permitted by this By-Law for the zone in which such lot is located.

6.16 No person shall construct any building on any lot having a lot width less than the lot frontage requirement for the zone in which the building is to be constructed.

Dwellings Below Grade

The by-law is silent.

Parking

The by-law, in section 15.4(a) requires one accessible parking space for each unit.

A.1.6 Ottawa

Official Plan

The policy statement contained in the PLAN OF LAND USE: RESIDENTIAL AREA while not prohibiting converted dwelling use, is too general to be of practical assistance:

"The Residential Area category is intended to include: all dwelling uses..."

Statements to support conversion can be found for specified districts, as follows:

Plan of Heritage (Heritage Districts)

Goals

> To preserve, improve and utilize heritage sites, structures, buildings, areas and environments for the benefit of the community and posterity, in co-ordination with the comprehensive planning needs and requirements of the City of Ottawa.

(NOTE: These are the most useful of the 13 provided)

Objectives

1. To protect and preserve heritage.

2. To restore appropriate heritage.

3. To rehabilitate heritage.

5. To prevent demolition, destruction or inappropriate alteration or use of heritage.

7. To develop and foster creative, appropriate and economic uses of heritage.

8. To consider social and community needs, in the preservation, improvement and utilization of heritage.

Implementation:

2. By-Laws (a) "Furthermore heritage zoning regulations will stabilize development, which, in turn, will encourage other investment, rehabilitation and conversion of certain uses to uses which are more compatible with the objectives of this plan."

Plan of Sandy Hill (pending: Amendment No. 84)

Policies:

A. General

A. "1. To preserve and enhance Sandy Hill as an attractive residential neighbourhood, especially for family living.

2. To provide for a broad range of socio-economic groups.

3. To accept a modest increase in population, primarily as a way of housing some of growth in the Central Area labour force...

B. Land Use

1. Residential Land Use

(a) To preserve and enhance the existing stock of good housing.

(c) To provide a wide variety of housing, including accommodation for low-income people, the elderly, the handicapped and others with special needs.

Plan of Centre Town (Pending: Amendment No. 94)

3. Housing Policies: Convervation, Rehabilitation and Redevelopment

"The City of Ottawa shall adopt regulations to prevent the unnecessary demolition of good housing and shall encourage the retention and improvement of existing structures.

Zoning By-Law (By-Law No. AZ-64)

Definition: 34.(v) "Converted dwelling" which means an existing dwelling on an existing lot in which the number of dwelling units has been increased without alteration to the exterior of the building except for the required fire escapes, extra windows and entrances and provided that the building, when converted, complies with the provisions of the "building by-law" and the parking provisions of this By-Law, By-Law 311-65

Conditions are set for for conversion of units in the R4, R5, R6, R11 and R12 districts, which cover such matters as age, minimum floor area of both proposed units and existing structures, and maximum number of units determined by lot width:

39(b)(iii) converted dwelling, if:

(A) The building is twenty (20) years or more in age based on the original date of construction, of which date the applicant for a building permit shall submit satisfactory proof, and

(B) each dwelling unit created has a minimum floor area of thirty-seven (37) square metres exclusive of halls and stairwells, and

(C) the total habitable floor area in the original dwelling is one hundred and thirty (130) square metres or more before conversion, and

(D) the dwelling contains not more than four (4) dwelling units after conversion when the lot width is twelve (12) metres or more and no more than two (2) dwelling units after conversion when the lot width is less than twelve (12) metres.

NOTE: The provisions of 39(b)(iii) are similar to these for Heritage-Commerical, HC1 districts except that the minimum floor area of each dwelling unit created is to be 65 square metres, and the habitable floor area of the original structure is not governed).

In Heritage-Residential, HR1 and 2 districts the structure is to be 20 years old at least. Fifty percent (50%) of the units must have 3 or more bedrooms and the minimum floor area is to be 375 square metres.

General By-Law Requirements

All general requirements (covering such matters as side yards, density, corner sightlines, width of lot, etcetera) must be complied with.

Dwellings Below Grade

The by-law is silent.

Parking

Requirements for converted dwellings are contained in Section 13(1A):

13(1A) Number of Spaces per Dwelling Unit

Area A on Map F		Area B on Map F		Area C on Map F		Minimum Visitor Parking Area "A", "B", "C"
Min.	Max.	Min.	Max.	Min.	Max.	
Converted Dwelling						
0.5	2.0	0.7	-	1	-	0 0 0

These requirements are not as constraining as those required for single family dwellings, duplex and rows, where the numbers, respectively are:

1	-	1	0	1	-	0 0 0

A.2 MODEL 3

(Building an addition (vertically or horizontally) to a grade-related dwelling to increase the number of dwelling units.)

A.2.1 Kingston

Model 3 conversions are prohibited both by 5.23's provision that there be "no change, addition or enlargement made to the external walls or roof" and by 5.23A's provision that the maximum addition to floor space is 19 sm and the roof may be altered or enlarged for light and air by no more than 10% of the roof area.

A.2.2 Hamilton

Section 19 contains a restriction on increasing the cubic contents of a converted dwelling in single-family districts, and therefore prohibits conversion per Model 3.

A further condition is attached which applies to all districts that "the external appearance and character of the dwelling is preserved." It is arguable, therefore, that in areas other than single-family areas, a thoughtfully designed addition of similar materials would be permitted.

A.2.3 Toronto

In R1, R1A and R1F such a conversion would be prohibited due to the prohibition against exterior additions and major external changes as well as the requirement that the structure retain its appearance as a single-family dwelling.

Throughout the other areas (R2, R3, R4, R4A) where "converted dwellings and lodging houses" are permitted, the by-law as enacted addresses only lodging houses, while converted dwellings are the subject of new legislation in the 321-78 and 501-81 series of by-laws which have been passed at Council. At the time of writing these by-laws are before the Ontario Municipal Board. When enacted, these by-laws, as drafted, will also require that the house continue to appear as a single-family dwelling and any addition will be limited to a maximum of 0.15 times the coverage of the lot. In practice this will render impractical many proposed conversions utilizing additions, but on some lots will make an addition an attractive part of a conversion.

A.2.4 Woodstock

The Woodstock by-law contains guidelines for permitted conversions in sections 10.2.3 for R2 areas and section 12.2 for R3 areas. So long as a proposed conversion utilizing an addition fits within the set-back and other requirements of these sections, there is no impediment.

A.2.5 North York

Aside from the definition ("'dwelling converted' shall mean a dwelling more than thirty (30) years old altered to contain a greater number of dwelling units") the by-law contains no other requirements for conversion. In the two areas where converted dwelling use is permitted (RM3 and RM4) an addition, and thus a model 3 conversion would be acceptable so long as all set-back and other standard requirements are met.

A.2.6 Ottawa

Model 3 conversion is prohibited. Conversion is only permitted "without alteration to the exterior of the building" by the definition in section 34(v).

Model 4 and Model 5 conversions are prohibited in all study municipalities where the same provisions in each zoning by-law prohibit both models.

A.3 MODELS 4 AND 5

Model 4 - Building a second or third separate dwelling on a lot which presently has one dwelling unit in place (e.g. back lot or side lot development).

Model 5 - Building several separate dwelling units on a lot which already has a multiple family development in place (e.g. building on landscaped open space around a high-rise building).

A.3.1 Kingston

A side lot rental unit is prohibited by the requirement that one building occupy one lot. This also prohibits a rear-yard rental unit; this is reinforced by the prohibition against a dwelling at the rear of another building.

5.22 Residential Units Fronting on a Street

(a) No building which is not fronting on a street shall be erected or altered for use as a dwelling.
(By-Law Nos. 8499 - 1975 and 9229 - 1978)

(b) No building at the rear of any other building on the same lot shall be erected or altered in such a manner as to produce the condition of a dwelling located in the rear of any other dwelling and not fronting on the street.
(By-Law No. 8499 - 1975)

A.3.2 Hamilton

Models 4 and 5 conversions are prohibited in Hamilton by 4(3)(b) which requires that the dwelling be on a lot on a street together with the requirements that there be only one dwelling house per lot 4(3)(a). There is no specific house-behind-a-house prohibition, but the authorities use these two subsections together to prohibit it. Hamilton also has complex "light obstruction" prohibitions which prevent close construction.

2(2)J.(ib) "Average angle of light obstruction" means that angle which is obtained by multiplying each different angle of light obstruction by the length of the building frontage over which it occurs, and dividing the sum of

> these products by the total building frontage on that street; and, in such computation, where any angle of light obstruction is less than 20 degrees it shall be considered as 20 degrees, but where any section of a height which is uniform along the street frontage has an angle of light obstruction less than the average permitted and has a frontage of less than 6.0 metres (19.69 feet), the same shall not be included in such computation to reduce the average; (10379/64) (79-288)

A.3.3 Toronto

Models 4 and 5 are prohibited in Toronto by requirements that a residential building be built on a lot fronting on a "public highway" 4(20)(a) and by the prohibition that a residential building is not to be in the rear of another 4(20)(b), together with the requirement in 4(26) which amounts to a provision that one can only build one building in a lot.
(route: 4(26) - 2(64) "lot")

But due to the definition of "lot", if the rental structure, apparently separated above ground were connected to the original house by a common basement, the two would be deemed one building, and if the set-backs were complied with, no prohibition would exist in terms of construction.

The renting of the addition would be prohibited by the existing prohibitions of the "conversion" provisions against external change and prohibition against building more than 55 feet into the lot.

> "lot" means a parcel of land except where two or more buildings or structures, exclusive of any accessory building or structure, are or are to be erected on a parcel of land in which case each such building or structure, whether erected or to be erected simultaneously or at intervals, shall be assigned a defined part of the parcel at the time of application to the Commissioner of Buildings for approval of the plans of the building or structure and each such part shall be deemed to be a lot; and where two or more buildings or structures have a common basement, whether or not they are also connected above the natural level of the ground, such buildings or structures shall be deemed to be one building.
>
> 4(20)(a) No person shall erect or use any residential building otherwise than on a lot fronting or abutting on a highway

assumed for public highway purposes, other than any lane laid out in the rear of lands abutting on a highway or any outlet connecting such a lane with a highway.

(b) (i) No person shall erect or use any residential building in the rear of any other building.

(ii) No person shall erect or use any building in front of any other building in such manner as to produce the condition of a residential building being located in the rear of any other building.

4(26)(a) No person shall, in any R District, erect or use any building or structure except on a parcel of land that could, at the time of application for a building permit, be conveyed in compliance with the provisions of The Planning Act.

(b) No person shall, in any R District, erect or use more than one building or structure, together with any building or structure that is accessory thereto, on a parcel of land which complies with the provisions of paragraph (a).

A.3.4 Woodstock

Models 4 and 5 are prohibited. Due to the wording of the requirements for each residential area, more than one residential building cannot be constructed on a "lot" and, in addition, the street frontage requirements prohibit a rear-yard structure.

2.69 "LOT" means a parcel or tract of land;

2.69.1 which is a whole lot as shown on a registered plan of subdivision; or

2.69.2 which is held under separate ownership from adjacent lands according to registration thereof in the Registry Office or Land Titles Office.

6.13 Street Frontage Required

No person shall erect any building or structure in any zone unless the lot upon which such building or structure to be erected has frontage upon an improved street.

A.3.5 North York

Models 4 and 5 are prohibited. Only one building is permitted per lot. Lot is defined as above. In addition, street frontage is required which would prohibit rear-yard construction.

2.52 "Lot" (in general) shall mean a parcel of land which fronts or abuts on a street, and

6.15 No person shall erect any building or structure in any zone unless the lot upon which such building or structure is erected, or to be erected, fronts upon an improved street which has been graded and gravelled to the specifications of the Borough Commissioner of Public Works to permit motor vehicular traffic at all times of the year.

7.2.1 No person shall erect more than one one-family detached dwelling on any residential lot.

A.3.6 Ottawa

Models 4 and 5 are prohibited - only one residential building per lot.

6. Except in the case where a group building project is permitted, not more than one (1) residential use building shall be erected on any lot within any of the areas defined in this by-law.

23. "lot" means a parcel of land abutting a public street which may be on a registered plan of subdivision.

APPENDIX B

APPENDIX B

The following is a detailed discussion of Models 2 through 5 and the extent to which the various policies contained in the Official Plans and provisions of zoning by-laws of each case study municipality impact or a particular model. This portion of the paper should be read in conjunction with Appendix A which contains the detail of the various policies and provisions discussed here.

SUMMARY FOR MODEL 2

KINGSTON

In theory, converted dwelling use in Model 2 is permitted throughout all residential areas of Kingston being prohibited in three small sub-areas. In practice, it is difficult to convert a dwelling due to the requirements included in the zoning by-law. Sections 5.23 and 52.3(A) contain a code intended to govern and completely encompass conversion of one-family dwellings to multiple-family dwellings (5.23) and to two-family dwellings (5.23(A)). These sections contain age requirements that the building proposed for conversion must have been constructed prior to 1941. External change is prohibited. Any external alteration of any sort is limited both as to purpose and area.

The zoning by-law contains size requirements both as to the existing floor areas of one-family dwelling proposed for conversion and as to the floor area requirements for the resulting converted units. The impact of the size requirements will be to prohibit conversion in all but a tiny proportion of the existing housing stock in Kingston as demonstrated by information regarding floor area of dwellings found in the Ministry of Revenue assessment data. This data indicates that of the existing 7,722 owner-occupied grade-related dwelling units in Kingston, only 221 are larger than the requirement that the existing dwelling

proposed for conversion be a minimum of 2,500 square feet (232.25 square metres) in area.

The resulting converted dwelling units are required to have total floor areas well above the requirements contained in the OBC and creation of dwelling units with one or more separate bedrooms is strongly encouraged as opposed to the creation of dwelling units without a separate bedroom.

The result of the requirements that the proposed converted dwelling units fit within either section 5.23 or 5.23(A) as well as complying with the parking requirements of the by-law will result in very few proposals for converted dwelling use proceeding as of right. Many applications will require the approval of the Committee of Adjustment if the variance is major a re-zoning will be required. This will result in an expensive, time-consuming process for the applicant and provide ample opportunity for neighbours to object. The key informant interviews in Kingston indicated that due to a number of negative experiences with absentee landlords catering to the student population at Queen's University, the community reaction to any proposals for conversion, of whatever type, tends to be adverse since the existing stock housing meeting the age and size requirements for possible conversion tends to be located in the older residential areas close to the University.

An in-depth examination of the requirements of the Official Plan and the local by-law follows below.

KINGSTON

OFFICIAL PLAN

General statements in the Official Plan for Kingston, as with most of the other municipalities, can be used to provide oblique support for conversion. Like many Official Plan statements they are of such a general nature that they can be manipulated to provide support for many other types of recommendations.

In Kingston, for example, Section 1(8) Housing states:

> "It is the policy of council to determine periodically the housing needs of the population and to stimulate the building of such units to provide the population with sanitary, safe and sound habitation."(1)

This policy statement would obliquely enable municipal authorities to promote conversion of larger residential structures containing one dwelling unit to structures containing two or more smaller dwelling units when the perceived housing needs of the population would support it.

The Kingston Official Plan in Section i(30) contains a serious constraint against conversions within the areas designated within the City as "AREAS OF STABILITY":

> "It shall be the policy of counil to preserve and protect these areas so that no basic changes will be made through zoning or other public action which is out of keeping with the character of the areas for a period which may range up to twenty years. Repairs, maintenance and some enlargements but not conversions, will be permitted to uses lawfully existing." (underlining added)

From the foregoing it will be seen that the Official Plan for Kingston contains a statement of such generality that it can be used to support any housing program including conversion per Model 2 but it is not, in fact, strongly oriented toward conversion. Another policy statement is strongly directed against conversion in certain areas.

KINGSTON BY-LAW

In section 5.23 and the recently enacted Section

5.23(A) of the Kingston By-Law in effect created a code which is intended to govern and completely encompass conversion of one-family dwellings to multiple-family dwellings in the case of 5.23 and to two-family dwellings in the case of 5.23(A). The definition section of the by-law does not contain a definition of a converted dwelling; instead, the provisions in section 5 taken together constitute a comprehensive definition. The recently enacted section 5.23(A) was intended to be more constraining than the provisions of the already existing section and were drawn up as a response to perceived problems arising from conversions in the area adjacent to Queen's University. Apparently, the reaction of the local community to "conversions" by absentee landlords to accommodate large numbers of Queen's students was strong enough to ultimately result in the amendment.

Converted dwelling use is permitted in virtually every area of Kingston where residential use is permitted, being prohibited in only three small sub-areas: a mobile home location in the north-east of the city, the area designated "E" in the by-law which coincides with the University buildings and on the block between Barrack Street and Ordnance Street at Rideau.

Section, 5.23, withdraws conversion applications from the general requirements of the by-law by introductory language that the Section applies to conversions "notwithstanding any provision or regulation of this by-law" if the conditions of the subsection are met. The effect of this is to permit as of right those conversions which fit completely within the parameters of the subsection and to prohibit conversions, as of right, if the conditions are not met.

Pursuant to 5.23, the proposed conversion of a one-family dwelling to a multiple-family dwelling, due to the definition of "multiple-family dwelling", is to be to three or more units. The permitted zones are laid out, therefore any proposal must be within one of the permitted zoning areas. An age requirement

is included, thus the proposal must be for a one-family dwelling constructed before 1941. A prohibition is put on external change. A ratio of dwelling units with one or more separate bedrooms is established in reference to dwelling units with no separate bedroom. The ratio is to be a minimum of three to one. The total floor area of each proposed unit is to be according to a table based on the number of bedrooms as follows:

0-28 m^2 (301 square feet)
1-42 m^2 (452 square feet)
2-56 m^2 (603 square feet)
3-70 m^2 (753 square feet)
4-79 m^2 (850 square feet)
5-79 m^2 (850 square feet) + 9 m^2 (97 square feet) for each bedroom beyond four.

The existing one-family dwelling for which conversion is proposed must have a minimum total floor area of 232 square metres (2,497 square feet).

Section 5.23(A) applies to the conversion of a one-family dwelling to a two-family dwelling. The introductory words of the Section withdraw such a proposed conversion from the general requirements of the by-law providing that the conditions contained in the Section are to be met. Once again the zoning areas in which the proposal is to located are set forth. The section contains a size limit to any increase in floor area to not more than 19 square metres of floor space. Similarly roof alterations for the purposes of light and air are limited to an area of no more than 10% of the roof. (These requirements relating to conversions can be analysed in greater detail by use of the matrix for model 2 which is in Appendix A). The floor area requirements for section 5.23(A) are the same as those for section 5.23.

The floor area requirements for converted units in the zoning by-law are in excess of the minimum provided for by the Ontario Building Code.

The impact of these requirements, especially the existing minimum floor area requirement of 232 square metre (2,497 square feet), is to prohibit conversion possibilities in a large percentage of the existing housing stock. According to Ministry of Revenue assessment data there are 7,722 owner-occupied grade-related dwelling units in Kingston. Of these, only 221 are larger than 2,500 square feet (232.25 square meteres). Calculating the total area required as a minimum to create three three-bedroom converted units and comparing the area required to the 232 square metre requirement gives an idea of how generous the size requirement is. The Kingston by-law requires 70 square metres (753 square feet) for a three-bedroom unit, so presumably the City representatives were of the opinion that this area requirement is a suitable minimum. Three of these 70 square metre three-bedroom units total 210 square metres (2,260 square feet) which is less than the minimum required before a dwelling is eligible for conversion under the by-law.

The by-law contains parking requirements for converted dwellings in the amount of one parking space for each two dwelling units in a building which is converted to a total of not more than four dwelling units. One parking space is required for each dwelling unit in a building which is converted into five or more dwelling units. It can be seen that this is a serious deterrent to a conversion involving five or more dwelling units. The parking is to be located in the rear yard of the lot or in an adjacent or neighbouring lot not more than 60 metres from the building lot. As previously discussed in this study, parking requirements can act as a practical deterrent to conversion since it can be difficult or impossible to provide the required parking on site. Since an application for conversion on a lot where the parking could not be supplied in the rear yard would require an application to the Committee of Adjustment for a minor variance, the parking requirements can provide a tool for exploitation by neighbouring land owners who object to the conversion and thus prohibit use of the lot and the existing structure. Opposition to converted dwelling use regardless of the circumstances by neighbours is not merely

a hypothetical possibility. In each municipality included in the study reference was made to incidences of less than rational opposition by neighbours to applications for conversion, generally in certain areas of the municipality. The areas from which opposition could be expected tended to be middle and upper income areas, the areas containing a supply of larger houses suitable for conversion. In one of the study municipalities (not Kingston) a staff member cynically remarked that certain performance standards which were difficult to meet were included in the by-law so that virtually no application would proceed as a right and the neighbours would always have a vehicle for opposition.

As noted above, the introductory language of sections 5.2 and 5.23(A) withdraw an application for conversion out of the general requirements of the by-law with regards to such matters as lot frontage and size requirements.

Dwelling units may be partially or wholly constructed below grade in Kingston, so long as the light, ventilation and size requirements of the OBC are met.

From the foregoing, it can be seen that an application for conversion for the model under discussion, namely, that of changing a single household use to a multiple household use must fit within the provisions of section 5.23 for a conversion to three or more units, or within section 5.23(A) for a conversion to two dwelling units. In all cases the existing dwelling structures must have been constructed prior to 1941, the parking requirements of the by-law must be met, the lot must be located within one of the permitted zones and the minimum floor area requirements must be met. In both sections the constraints on external change are stringent. Any application which does not fit within the sections will require approval by the Committee of Adjustment if the variance from the sections is minor; if the variance is major a re-zoning application will be required. (For a fuller discussion of this, please refer to the portion of the study which examines the Approval Process).

HAMILTON

The Hamilton by-law permits converted dwelling use as anticipated by mode 2 throughout the residential areas of Hamilton with a few small sub-area exceptions. Conversion to an use other than residential use is permitted in the Official Plan in high-intensity residential areas where council may permit the conversion of existing residential buildings for commercial uses. This may well act to create economic competition in those areas for conversion between commercial office use and the less profitable multiple residential uses.

The practical opportunities for conversion are limited by section 19 of the Hamilton by-law which contains a code like that found in the Kingston by-law, which completely encompasses converted dwelling use. So long as a proposal complies with the performance standards set out in section 19 the rest of the Hamilton by-law does not apply. The major constraints contained in section 19 are the age requirement that the building was built prior to 1940, the limitations on internal increase and cubic contents of the structure in some zoning areas and the limits to the degree of external change in all residential areas. The parking requirements in Hamilton serve to restrict the number of units which will be able to proceed as of right. The number of units in a converted dwelling is dictated by a combination of the zoning district in which the existing dwelling is located and the size of the lot which will have the effect of prohibiting conversions in one area which would be considered very acceptable in another. The minimum unit size for converted units is well in excess of the requirements of the OBC and will act as a practical deterrent to certain bachelor and one-bedroom forms of conversions.

HAMILTON

OFFICIAL PLAN

The official plan for the City of Hamilton contains in Section A.2.1 - Residential Uses a general statement which

can be used to support conversion. When considered together with the statements in Subsection C.7 - Residential Environment and Housing Policy a reasonably strong case can be made that the Hamilton Official Plan contains encouraging provisions for conversion.

Section A.2.1 referred to immediately above contains the following:

> "It is the intent of this plan to ensure that the residential uses (sic) of land is sufficient to accommodate anticipated population growth in changing demands for residential developments of various styles and densities..."

> "2.1.8 It is the intent of council that a variety of housing styles, types and densities be available in all residential areas of the City,..."

Subsection C.7 contains the following statement:

> "...while it is expected that single-family housing will continue to be the dominant housing requirement, a latent demand for multiple-family housing is recognized.
>
> 7.1 In the development of new residential areas and as far as practicable, in the infilling or redevelopment of established areas, council may undertake to require the following in order to achieve high standards of residential amenity:..."

The subsections which follow this language include the provision of advice and assistance in the improvement and maintenance of private dwellings (v), "methods of encouraging the maintenance and improvements of buildings in residential areas" (vi). Section 7.3 contains a policy guideline that council

is to ensure that the local residential environment is of a "condition and variety satisfactory to meet the changing needs of area residents." Among the things that council will do is to encourage the "rehabilitation of dwellings as an alternative to demolition" (vi) and in subsection (iii) of section 7.3 council is to encourage residential development "that provides a range of types and enure to satisfy the needs of the residents at densities and scales compatible with the established development pattern".

Hamilton's official plan contains one strong deterrent to the conversion of existing residential buildings for more intensive residential use. In high intensity residential areas, council "may permit the conversion of existing residential buildings...for commercial uses such as financial offices...". Presumably this would encourage conversion of house form older buildings for non-residential uses such as lawyers' professional and commercial offices, local banks and the like. This form of conversion can be very attractive for such uses who may desire ownership of a building of a scale sufficiently modest that it is economically feasible to carry. It does, however, remove these attractive residential buildings from the potential stock of buildings which intensification through conversion might otherwise look to.

HAMILTON BY-LAW

The Hamilton by-law contains a definition of converted dwelling.

> "Dwelling, converted" shall mean a dwelling altered from a dwelling to make a greater number of dwelling units, or in a district where permitted a multiple dwelling altered from a dwelling.

Section 19 of the Hamilton by-law contains a code, like that of the Kingston by-law, which completely encompasses

converted dwellings removing applications for conversion and of the general by-law so long as the conditions of the section are met. The list of permitted uses for each of the residential zones in Hamilton contains an indication as to whether or not converted dwelling use is permitted. Converted dwelling use is a permitted use throughout most residential areas in Hamilton, being prohibited in only a few small sub-areas.

An age requirement is included in section 19. In order for a dwelling to be eligible for dwelling conversion it must have been erected prior to July, 1940. No internal increase in the cubic area is permitted in these residential districts which permit only single-family dwellings. This is a serious limitation to converted use when in order to make the use complay with OBC requirements, or to cope with practical concerns such as access some increases in the cubic content of a structure may be dictated. Throughout the remainder of the dwelling districts there is no prohibition of increase of cubic area contained in a structure but there is a requirement in subsection (v) of section 19 that the external appearance and character of the dwelling be preserved. Arguably, this permits some external change if it is thoughtfully done with attention to such details as external building materials. The maximum number of units which can be constructed in a converted dwelling ranges from a minimum of two to a maximum of three and is dictated by the zoning district and the size of the lot (see subsections (vi) through (viii)). The minimum size of each new dwelling unit is to be at least 65 square metres which is well in excess of the requirements of the OBC.

Parking requirements are to be in accordance with section 18(3) which requires one parking space per unit unless the building is a "multiple dwelling" (which is generally one containing more than four units) in which case parking spaces may be reduced to 80% of the number of dwelling units. No parking may be located in a required front yard.

The one exception in section 19 to the non-application of the remainder of the by-law is contained in sub-section (x). In the situation where the conversion requires an addition or enlargement, the front yards, side yards and rear yards as provided in accordance with the general provisions of the zoning by-law are to be complied with.

To summarize the above, it appears that conversions from single household use to multiple household use are permitted within the limits set out in section 19 of the Hamilton zoning by-law. The major constraints are the age requirements, the limitations on increases to internal cubic area in some zoning areas, the limits to the degree of external change in all areas, as well as the parking requirements, the front, side and rear yards compliance requirements for additions, and the limit on the number of units by a combination of the zoning area and the lot size. The minimum unit size is very generous and will act as a practical deterrent to some desirable bachelor and one-bedroom type of conversions.

The local building by-law contains requirements that are stricter in some ways than those of the OBC. Each application will be affected in varying degrees depending on the proposal.

TORONTO

SUMMARY FOR MODEL 2

While the Official Plan for the City of Toronto is generally neutral with regard to conversions, the existing zoning by-law permits converted dwelling use in only a small number of districts (which coincidentally tend to be very high income districts, such as the Rosedale area) and all

together make up less than 10% of the geographic area where residential use is permitted. A series of by-laws is currently proceedings through the approval process, having been passed by Council but which have not, as of the date of writing, received approval of the Ontario Municipal Board. The proposed by-laws extend converted dwelling use throughout all residential areas of the City, in theory extending the geographic possibilities for converted use significantly. In practice, the combination of the requirements of the existing by-law and those in the proposed by-laws, opportunities for conversion will continue to be seriously limited due to the age requirements, the ownership requirements, the prohibitions on external changes and certain area specific requirements contained in the by-law such as the one for the R1F Districts that the applicant provide evidence that the structure is unmarketable as a single-family dwelling prior to obtaining permission to convert. While the proposed by-laws relax the parking requirements somewhat it can be expected that inability to meet on-site parking requirements will result in many proposals being unable to proceed as of right and will require application to the Committee of Adjustment.

TORONTO

OFFICIAL PLAN

The Official Plan for the City of Toronto contains only one specific policy statement regarding conversion. The statement contained in Section 2A.9 supports conversion to the extent that housing targets cannot be met by other producers and programs by council. Council by this statement is permitted to "acquire, improve and/or convert existing houses for individuals and families of low-to-moderate income."

The general statements contained in other sections of the Official Plan, for example, sections 2A.1, regarding the housing goals of council, 2A.3 , regarding housing policy statements, and 2A.8, regarding goals and targets of long and short term housing policies can all be used to obliquely support conversion. The housing goals of council as set out in 2A.1 include "the provision of...housing...at prices which they can afford', the "equitable distribution of housing...", the "preservation and improvement of existing housing..." and housing to suit "the handicapped and the elderly". Council is directed in 2A.3 to prepare and adopt housing policy statements. These statements are to include such matters as "annual targets for the repair and rehabilitation of existing housing", "targets for the acquisition and improvement of existing housing", "annual targets for the production and provision of housing for various household types...including housing suitable for families with children".

Council itself is enabled to carry out the achievement of its goals and targets for long-and short-term housing policies by the provisions of section 2A.8 that "Council may acquire land and/or buildings".

The Official Plan could, arguably, be manipulated to be supportive of conversion through statements aimed at the more efficient use of the infrastructure such as those statements contained in section 1.1(b) that it is "Council's policy...to improve the efficiency, amenity and appearance of the various parts of the City...".

A policy statement to provide indirect support for conversion as opposed to demolition of structures can be found in 1.1(c): "the distinctive character of the different parts of the City,... will be maintained and enhanced."

A number of the foregoing provisions for the City of Toronto are of a very general nature and could be relied upon only as indirect statements capable of oblique support for conversion and as with most general statements can be used to support many other types of programs and policies.

TORONTO BY-LAW

The zoning by-law for the City of Toronto is, at the time of writing, in a state of transition in that a number of proposed amendments known as the 321-78 and 501-81 series of by-laws have been passed by City Council and are before the Ontario Municipal Board but as of the date of writing, have not received approval. When this series of by-law amendments has been passed by the Ontario Municipal Board and signed by the Minister they will be retroactive to the date of passage by City Council. This situation leads to present difficulty since the more stringent of the requirements of either the existing or proposed by-laws are those which City staff currently require to be satisfied by an applicant before approval is given at the city level to a proposal.

The present by-law permits converted dwelling use in a small number of districts, namely, a sub area of the R-1 district, the R-1A districts and the R-1F districts. This represents less then ten percent of the geographic area where residential use is permitted.

At present in the R2, R3 and R4 areas of the City of Toronto, boarding and lodging houses are a permitted use within the limits of the by-law. When the 321-78, 501-81 series of by-laws are approved the relevant sections for each of the aforementioned zoning areas will be amended to include converted dwellings as well as boarding and lodging houses. This will result in converted use being permitted in more than eighty percent of the areas where residential use is permitted.

The present by-law contains a definition of converted dwelling house as follows:

> "Converted dwelling house" means a one-family dwelling house including any addition thereto, which has been or is proposed to be altered or converted so as to provide thereto two or more dwelling units.

The proposed definition for "converted dwelling and lodging house" is as follows:

> "...a dwelling house, originally constructed as a private detached dwelling house or a one-family dwelling house (other than row housing) which including any addition made prior to conversion, is at least five years old, which has been or is proposed to be altered or converted so as to provide therein two or more dwelling units and one or more boarding or lodging rooms."

It can be seen that the proposed definition which will apply to the R2, R3 and R4 areas is much stricter than the definition of converted dwelling house which will continue to apply to the R1, R1A and R1F districts. Since the requirements for the various districts in Toronto vary considerably, it is useful to consider the R1, R1A and R1F districts separately from the remainder. The age requirement for the R1 sub area (this sub area roughly approximates the area known as Rosedale) is that the house be at least twnety years old, while the age requirement for the R1A and R1F districts is that the house be at least forty years old and in addition, contain a gross floor area of at least 280 square metres. Minimum unit sizes are prescribed for the R1 sub area of at least 55 square metres with the further minimum that the average of all of the dwelling units total at least 110 square metres.

The R1A and R1F districts have ownership requirements that the applicant be the owner of the dwelling house for at least three years prior to the application for conversion. The owner in addition to satisfying this, usually by Statutory Declaration, must also submit conclusive evidence that the dwelling house is unmarketable at a reasonable price for use as a private detached dwelling house. There is no doubt, however, that a provision such as this allows ample discretion to refuse an application and in the event that an application requiring minor variance goes to the Committee of Adjustment, would provide handy grounds to an objector for opposing the application on the grounds that the evidence is no "conclusive".

The existing by-law for the R2, R3 and R4 areas anticipates boarding or lodging houses, not "converted dwelling" since a converted dwelling contains "dwelling units" which by the definition must contain culinary and sanitary conveniences. Therefore the municipal regulations reviewed for R2, R3 and R4 areas in this paper are the provisions contained in the 321-78, 501-81 series of by-laws referred to above. These by-laws contain numerous constraints. There are to be no substantial changes in the external appearance of the dwelling house as a one-family dwelling house and there are to be no exterior alterations or additions to the dwelling house except an addition which may be added in the year or side yards and which is not to exceed 0.15 times the area of the lot. This 0.15 times addition is permitted only when the overall coverage will remain within the density requirements of the by-law. Only one addition may be added at the time of application or thereafter. Porches and dormers may be added in very limited circumstances. The average of the floor areas of the dwelling units after conversion must not be less than 33 square metres in the case of a converted dwelling and lodging house and not less than 65 square metres in the case of a converted

dwelling house. The age requirement for the proposed additions to the by-law are the same as those contained in the definition section, namely, the house must be at least five years old. In a structure which is proposed for conversion to a converted dwelling and lodging house in an R2 district, a limit is placed on the number of boarding or lodging rooms which may be included in the converted structure. In addition to the dwelling units created the maximum number of boarding or lodging rooms is not to exceed six.

While it can be argued that permitting converted uses will render the by-law more permissive of converted use then is the case at present, the provisions as proposed in the series of by-laws currently before the Ontario Municipal Board are sufficienty restrictive that they will act as as practical deterrant to conversion of many residential structures.

Converted dwelling and lodging houses and converted dwellings are permitted uses in C1 and Cr districts with no conditions attached to the converted use beyond those contained in the definition sections (note: "converted dwelling and lodging houses" is one of the definitions contained in the yet to be formally approved 321-78, 501-81 series). It should be noted that due to the definitions of "residential building" and "mixed use building" in section 4(12)(o)(vii) and (viii) it is likely that converted residential uses in CR districts are caught by the Recreation Space and Common Outdoor Space requirements.

The parking requirements as they exist at present require one parking space for each dwelling unit in a "place of residence" (section 4(13)). In addition, pursuant to the requirements of 4(13)(e) a parking space cannot be located on a lot in front of a main wall of a residential building.

The provisions contained in 321-78, 501-81 series are more lenient for a converted dwelling house in that one parking space is required for the first dwelling unit where such parking space exists on the lot prior to conversion, plus one parking space for each dwelling unit in excess of the first two dwelling units. The typical narrow lots throughout much of the older residential districts of Toronto which contain the usual mix of semi-detached, row houses and some detached dwellings often do not provide enough room for a driveway to the rear yard, and, in the absence of a lane to the rear, can render an application to converted dwelling impractical due to the impossibility of complying with the rear yard, onsite parking requirements.

Nothing in the provisions regarding converted dwellings in the Toronto Zoning By-Law, either as it exists or as it is proposed, exempts an application for converted dwellings from the set back, lot size, lot frontage, height and density requirements contained in section 4: General Provisions of the By-Law. The only exceptions to this are the requirements of section 6(7) for the R1 sub area which permits a vertical conversion of a dwelling house to a pair of semi-detached dwellings notwithstanding that the dwelling houses best created by such vertical division will not comply with section 4. With the exception of this very small exception, all converted dwellings must comply with section 4 including those structures which previous to conversion have legal non-conforming status due to their existence prior to the passage of the by-law in 1953 since they will lose the non-conforming status on the conversion to a different use. Very few houses in the City of Toronto were built after 1953, unlike the houses in the outer boroughs and North York.

Generally speaking, there are no prohibitions regarding dwelling units below grade aside from those contained in the OBC. The very small prohibition to this approach are contained in section 4(18)(a) and (b) which prohibit below grade dwelling quarters in a duplex or a double-duplex dwelling house. The reasons for this prohibition are not known due to the length of time since the section was enacted. The impact is likely to be minor as the number of duplexes (as defined in the by-law they must have been constructed originally to contain two dwelling units) is relatively small in terms of overall housing stock.

Toronto has a local housing standards by-law above the requirements of the OBC which will apply to some conversion proposals to restrict them further.

WOODSTOCK

SUMMARY FOR MODEL 2

The recently adopted by-law for the City of Woodstock permits converted dwellings in the R2 and R3 districts which occupy approximately one quarter of the lands zoned for residential purposes. These areas were chosen and designated to coincide with the areas which would be eligible for RRAP funding. Opportunities for conversion as of right do not exist in the remainder of the residential districts.

Within the districts where converted units are permitted, the required yards, set-backs, height requirements, landscaped open space, number of converted dwelling houses per lot, dwelling unit area, and parking requirements are set out. No deviations are permitted in the by-law with the exception of yard set-backs in the case of a house located in the R2 district built prior to the passage of the by-law. The by-law contains no restrictions as to changes

to the interior or exterior of the building, no age requirements and no other conditions of a subjective nature which must be met prior to obtaining permission to convert. Thus in Woodstock once the objective criteria are met, a proposal may go ahead.

The relevant sections of the by-law, 10.2.3 (R2 districts) and 12.2.1 (R3 districts), amount to a straightforward list of the yard, height, landscaped open space and other requirements and are self-explanatory. Reference may be made to these sections which are included as Appendix A and no in-depth discussion of the by-law is included in this part of the paper as it would be merely repetitive.

Care was exercised in Woodstock to attempt to ensure that the zoning by-law requirements reflected typical existing residential buildings to maximize the number of proposals that will go ahead as of right. The remainder of proposals outside the by-law will require Committee of Adjustment approval or a rezoning depending on the degree of variance.

WOODSTOCK

OFFICIAL PLAN

The Official Plan for the Oxford Planning Area contains the Official Plan for the City of Woodstock. The area-wide statements contained in Section 4: General Development Policies could be used to provide an indirect support for conversion on a county-wide basis which would include Woodstock.

> 4.2.1. "The county and area municipalities shall attempt to stimulate the provision of sufficient units of safe, sanitary and sound housing to meet the projected increase of the county's population...In addition, the county and area municipalities shall adopt measures to encourage the provision of housing and a variety of types, sizes, densities and styles...in an attempt to accommodate the differing needs, aspirations and lifestyles of the residents of the County of Oxford."

One of the specific measures which the area municipalities may undertake is "the development of a program directed toward the conservation, rehabilitation or redevelopment of the older established residential areas." 4.2.2.7). This can be aimed at an attempt to conserve residential stock in older residential areas through conversion. As being part of "conservation" and "rehabilitation". It is arguable that the "redevelopment" provided for in the statement could be used to support demolition of existing housing stock as opposed to conversion. The policy statements regarding designated historic sites and buildings, can be used to either prohibit or to encourage conversion. Section 4.4.5 contains a statement that the area councils may "prohibit the conversion of structures to uses other than those presently existing and shall not allow additions or alterations to structures which may detract from the architectural or historical value...". The following subsection permits area councils to "encourage the redevelopment or recycling of designated historical buildings to uses compatible with the historical or architectural character of the buildings". The same subsection contains a statement encouraging the preservation of historic sites and buildings. Conversion can be a useful tool for the preservation of historic residential buildings as opposed to demolition and new construction.

The Official Plan for the City of Woodstock which is contained in Section 5.11.2 "large urban growth policy area - City of Woodstock" contains only the most general statement for residential development. It could be used to support conversion indirectly, if at all. It would be a very weak policy directive, indeed.

> "5.11.2 Within the residential classification of land, the predominant uses shall be for all forms of residential development including low density single-family dwellings, medium and high density multiple-family dwellings..."

NORTH YORK

SUMMARY FOR MODEL 2

Conversion is virtually impossible in North York due to the area and use specific approach of the official plan and the rigidity of the zoning by-law together with the extremely limited geographic areas where converted use is permitted in the by-laws. Within the geographic areas permitting converted use the prevailing built form is that of apartment buildings and thus little if any stock is available. The zoning for these geographic areas permits apartment buildings and a landowner is not likely to be tempted to convert a house from dwelling to converted dwelling use when a higher and denser use is available through the by-law.

NORTH YORK

OFFICIAL PLAN

A review of the Official Plan and the maps included for each of the planning districts within North York together with discussions with City staff indicates that any

departure from the specific permitted uses (contained primarily in the maps of the North York Official Plan) requires an amendment thereto. The City of North York has for some time now been preparing a new Official Plan, and planning staff anticipates that the new plan will be in place by 1985.

NORTH YORK BY-LAW

Few, if any, practical opportunities exist for conversion of dwellings in North York due to the requirements of the by-law, plus the limited geographic areas where converted use is permitted which contain almost no eligible stock. Converted dwellings are permitted only in the RM (Residential Multiple) 3 and RM4 districts which characteristically contain apartment buildings and few, if any, dwellings in house form. As the by-law permits apartment building use, a proposal to convert an existing dwelling will, in all likelihood, be economically unattractive.

The North York By-Law contains a definition for converted dwelling:

> "Dwelling converted" shall mean a dwelling more than thirty (30) years old altered to contain a greater number of dwelling units."

No variations will be permitted from the general provisions of the by-law. All the by-law provisions with reference to lot size, set backs and height limits must be complied with (see section 6.15 and 6.16).

They by-law is silent with regards to below grade dwellings, therefore they will be permitted so long as they comply with the requirements of the OBC.

The parking requirements are the usual requirements for the zone in which the converted dwelling is located. For the only two zones where converted dwellings are permitted, the RM3 and RM4 zones, the requirements are that the parking be located within the building on the same lot or in a parking station in the same zone as the dwelling is situated in the amount of one accessable parking space for each unit.

OTTAWA

SUMMARY FOR MODEL 2

While converted dwellings are permitted throughout a range of the residential districts in Ottawa, they tend to be concentrated towards the older parts of the city rather than in the more recently developed suburbs and the opportunities for conversion within those older areas are limited by significant constraints contained in the by-law. These include age requirements, which are generally that the structure proposed for conversion be at least 20 years old; a strict prohibition against alteration to the exterior of the building except for required fire escapes, etc., and large minimum floor area requirements for the resulting converted dwelling units. The yard, density, floor space index and other general provisions of the by-law continue to apply to proposals to convert. This results in many dwellings otherwise suitable for conversion falling outside the requirements of the by-law. In addition, the parking requirements will result in many proposals falling outside of the by-law. Together these will mean that many proposals will be required to take the Committee of Adjustment route if the variance to the by-law is minor, if not the proposal will require a rezoning.

OTTAWA

OFFICIAL PLAN

The Official Plan for the City of Ottawa contains in its plan of land use: Residential Area, a general statement which applies city-wide and which could be used as part of a policy to support conversion. This is said with some hesitation as the provision is so general as to be capable of being used to support any type of housing form.

> "The residential area category is intended to include: all dwelling uses...".

The Plan of Heritage for districts which are designated as Heritage Districts contains policy statements that could be adopted to a conversion attempt. It is one of the goals "to preserve, improve and utilize heritage sites, structures, buildings... for the benefit of the community and posterity...". Among the objections are the following: to protect and preserve, to restore, to rehabilitate, to prevent demolition, destruction or inappropriate alteration, to develop and foster creative, appropriate and economic uses, and to consider social and community needs in the preservation, improvement and use of heritage. All of these objectives can be used as part of a conversion policy. The Implementation section of the Plan of Heritage, section 2. By-Laws (a) states that heritage zoning regulations "will stabilize development, which in turn, will encourage other investment, rehabilitation and conversion of certain uses to uses which are more compatible with the objectives of this plan".

The Plan of Sandy Hill (pending: Amendment Number 84) Policies contains the following:

> "A. 1. To preserve and enhance Sandy Hill as an attractive residential neighbourhood, especially for family living.

2. To provide for a broad range of socio-economic groups.

3. To accept a modest increase in population, primarily as a way of housing some of the growth in the central area of the labour force..."

4. Land Use
   1. Residential Land Use

   (a) To preserve and enhance the existing stock of good housing".

Similarly, the Plan of Centre Town (pending: Amendment Number 94) in section 3. Housing Policies: Conservation, Rehabilitation and Redevelopment contains a policy directive aimed at preservation of the existing housing stock:

> "The City of Ottawa shall adopt regulations to prevent the unnecessary demolition of good housing and shall encourage the retention and improvement of existing structures."

The foregoing provisions in the Ottawa Official Plan can be used for conversion purposes in Heritage areas, Sandy Hill and Centre Town which will all be older areas located close to the centre of the City.

OTTAWA BY-LAW

The definition section of the Ottawa by-law contains a definition of converted dwelling which in itself includes a number of constraints:

> "Converted Dwelling" which means an existing dwelling on an existing lot in which the number of dwelling units has been increased without alteration to the exterior of the building except for the required fire escapes, extra windows and entraces and provided that the building, when converted, complies with the provisions of the "Building By-Law" and the parking provisions of this by-law, By-Law 311-65."

Throughout the majority of districts where converted dwelling use is permitted (R4, R5, R6, R11, R12), there is an age requirement that the building be twenty years old or more. There is a minimum floor area requirement for each dwelling unit created of 37 square metres (400 square feet) exclusive of halls and stairwells. The original dwelling must contain a habitable floor area of at least 130 square metres (1,400 square feet) and two dwelling units may be created on a lot with a width of less than twelve metres (39 feet), while no more than four may be created on a lot with a width of more than twelve metres (39 feet).

Converted dwelling use is permitted in the Heritage Area designated as HC (Heritage Commercial) 1 and the provisions are the same as those referred to above for the R districts with the following changes: the minimum floor area of each dwelling unit created is to be increased to 66 square metres and the maximum number of units is limited only by the minimum floor are requirements.

Converted dwelling units are permitted in HR (Heritage Residential)1 and HR2 areas where the minimum age of the structure to be converted is to be at least twenty years; fifty percent of the units are to have three or more bedrooms and the minimum floor area per unit is to be 37 square metres (400 square feet).

The general provisions of the by-law apply to proposals to convert. Which means that all side yard, density, floor space index, corner sight lines and other provisions must be complied with. This results in many dwellings otherwise suitable as candidates for conversion falling outside the requirements of the by-law since many older residential dwellings were built prior to the existence of the zoning by-law and do not comply with the set-back and density provisions. The Ottawa By-Law is silent as to whether or not dwellings are permitted below grade.

The parking spaces to be provided for converted dwelling units are laid out in sections 13(1a). While they are less onerous than those required for single-family dwellings, duplex dwellings and row housing the requirements, depending on the area in which the converted dwelling is located range between 0.5 spaces per dwelling unit to one space per dwelling unit.

Ottawa has a local building by-law which must be complied with, as well as the requirements of the Ontario Municipal Board. Together these will further constrain applications for conversion.

MODEL 3

Model 3 involves a proposal to build an addition vertically or horizontally to allow a grade-related dwelling to be changed from single household use to multiple household use as self-contained accommodation.

The discussion of the Official Plan for the study municipalities as it relates to model 2 is applicable to this model. A discussion follows, of the zoning by-law requirements as it affects a proposal for a conversion in the form of model 3.

KINGSTON

A proposal in the form of model 3 will be prohibited by the requirements of section 5.23 (referred to above in the discussion of model 2 and also to be reviewed in more detail in the matrix for model 2) that there be "no change, addition or enlargement" made to the external walls or roof and by the even more restrictive requirements of section 5.23A that the maximum addition to floor space is 19

square metres including that any roof alterations are to be only for the purposes of light and air and are to involve no more than 10% of the roof area.

HAMILTON

The code for converted dwelling use contained in section 19 of the Hamilton By-Law contains the restriction on increasing the cubic contents of a converted dwelling in single-family districts and therefore, in those districts the model 3 proposal is prohibited.

A further condition is attached which applies to all districts that the "external appearance and character of the dwelling is preserved". It is arguable, therefore, that in areas other than single-family areas a thoughtfully designed addition utilizing similar materials would be permitted.

TORONTO

In R1, R1A and R1F districts such a conversion would be prohibited due to the prohibition against exterior additions and major external changes as well as by the requirement that the structure retain its appearance as a single-family dwelling.

Throughout the other areas (R2, R3, R4, R4A) where converted dwellings and lodging houses are permitted, the by-law as enacted, addresses only lodging housing while converted dwellings are the subject of the proposed new legislation in the 321-78, 501-81 series of by-laws referred to above. When enacted, these by-laws, as drafted will also require that the house continue to appear as a single-family dwelling and any addition will be limited to a maximum of 0.15 times the coverage of the lot which additional coverage is to be achieved within the density requirement for the district. In practice this will render impractical many proposed conversions utilizing additions, but on lots of sufficiently large size will make an addition an attracti e part of a conversion.

WOODSTOCK

The Woodstock By-Law contains guidelines for permitted conversion in section 10.2.3. for the R2 areas and 12.2 for the R3 areas. So long as a proposed conversion utilizing an addition sits within set back and other requirements of these sections there is no impediment.

NORTH YORK

Aside from the definition (see above in the discussion of North York for model 2), the by-law contains no other requirements for conversion. In the two areas where converted dwelling use is permitted (RM3 and RM4), an addition would be acceptable so long as all set back and other standard requirements are met. It should be noted, however, that the key informant interviews indicate that very little housing stock is available in those areas which is suitable for converted dwelling use.

OTTAWA

Conversion in the form proposed for model 3 is prohibited. Conversion is only permitted "without alteration to the exterior of the building" by the definition contained in section 34(v).

MODEL 4 AND MODEL 5

Model 4 and model 5 are proposals for infill type development. Model 4 anticipates building a second or third separate rental unit on a lot which presently has one grade related dwelling unit in place (e.g. back lot or side lot development). Model 5 anticipates building several separate rental dwelling units on a lot which already has a multiple family development in place (e.g. building on landscaped open space around a highrise building). From the point of view of the Official Plans and the zoning by-laws the same discussion relates to both models. While the terms of reference of the present study do not suggest that the resulting converted units could be sold to separate owners, the possibility

suggests itself and is briefly considered at the end of the discussion of rental infill.

KINGSTON

A side lot rental unit, or units, is prohibited by the requirement that one building occupy one lot. The same requirement also prohibits a rear yard rental unit and the prohibition is reinforced by the prohibition against a dwelling at the rear of another building (Refer to the matrix for models 4 and 5 attached as an appendix for reference to the specific sections of the by-law).

HAMILTON

A proposal for a development in the form of either model 4 or model 5 is prohibited in Hamiton by section 4(3)(b) which requires that the dwelling be on a lot on a street together with the requirement that there be only one dwelling house per lot in section 4(3)(a). No specific house behind a house prohibition exists in the Hamilton By-Law but the municipal authorities use the two subsections in conjunction to prohibit it. Hamilton also has a complex "light obstruction" prohibition which prevents construction nearby an exising building if it infringes the prohibitions (Refer to Section 2(2)J.(1b) in the matrix, for the definition for the "average angle of light obstruction" in order to appreciate the complexity of the calculation that is required to be made.).

TORONTO

Models 4 and 5 would be prohibited in Toronto by the requirement that a residential building be built on a lot fronting on a "public highway" contained in section 4(20)(a) and by the prohibition that a residential building is not to be located in the rear of another residential building in section 4(20)(b), together with the requirement in 4(2b) which amounts to a provision that one

can only building one building on a lot. Due, however, to the definition of "lot" (see the matrix for models 4 and 5), if the rental structure, apparently separated above ground, were connected to the original house by a common basement, the two would be deemed one building, and if the set backs required by section 4, were complied with, no prohibition would exist in terms of the construction of the addition. The renting of the addition subsequent to construction would be prohibited, however, by the existing prohibitions against external change to an existing dwelling for those areas where converted dwelling use is presently permitted since such an addition would certainly qualify as "external" change to the existing dwelling. In addition, a prohibition exists against building more than 55 feet into the depth of the lot. Together these prohibitions will defeat a proposal for infill in the form of model 4 or model 5.

WOODSTOCK

Development as proposed in model 4 and model 5 would be prohibited due to the wording of the requirements for each residential area as more than one residential building cannot be constructed on a "lot"(See the matrix for section 2.69: definition of "lot"), and in addition, the street frontage requirements contained in section 6.13 (see matrix prohibit a structure located in a rear yard.

NORTH YORK

Model 4 and model 5 proposals are prohibited in North York due to the provision that only one building is permitted per lot (See Section 7.2.1). "Lot" is defined in section 2.52 to meet a parcel of land which fronts or abuts on a street. In addition rear yard construction is discouraged by the requirement that, street frontage is required for any building or structure in any zone.

OTTAWA

The model 4 and model 5 proposals are prohibited in the Ottawa district by the prohibition in the by-law against building more than one building per lot (See section 6. and section 23., both included on the matrix).

From the foregoing discussion it can be seen that throughout all of the case study municipalities infill as proposed in model 4 and model 5 is not possible under the existing municipal regulations, notwithstanding that it is not prohibited as per se by th OBC.

MODEL 4 and 5 - SALE UNITS

If the proposed infill unit (or units) is intended to be sold a severance of the lot on which the new unit is to be built will be required before a building permit can be obtained. The severance required by Section 29 of the Planning Act will require the approval of the Committee of Adjustment. In addition to the Section 29 approval, the approval of the Committee of Adjustment will be necessary if the lot deviates from the minimum requirement of the by-law or if the proposed unit does not comply with the set-back and yard provisions.

The by-law of each municipality included in the study contains prohibitions gainst the construction of a building to the rear of another building which will act to prevent infill in lots located to the rear of an existing structure.

Each of the municipalities require that a house front on to a street and have a street address. Ottawa, alone of the study municipalities considers a city lane to be a "street" for this purpose. The street requirement creates a problem which can be overcome, for proposed infill units to be located in rear yards, by the device of severing a slender strip of land from the "parent" lot to provide contact with the street for the rear-yard lot. This device will in all probability, require a re-zoning as most Committees of Adjustment will not consider this to be a minor

variance from the by-law. Even if the street frontage problem can be resolved, that of the prohibition of a house-behind-a-house remains as a separate issue to be dealt with in the re-zoning.

On-site parking requirements will provide a further impediment to the success of proposals for infill in rear yards and side yards where such parking either cannot be provided at all, or provided only at the cost of violating other yard provisions.

The approval process necessary for the creation of a sale unit (or units) in the form of Models 5 and 6 will be lengthy and expensive, a consideration that will act to deter many property owners.

MODEL 1: A number of individuals sharing a house with no structural changes made to the design and layout of the premises.

Municipalities have traditionally used the definition of "family" as a tool for controlling density and type of use of residential dwelling units. The origin of this usage is lost in the past, but there is no question that the definition of "family" occurs in this role from the early days of the zoning by-laws throughout North America. It has been, until very recently, this definition which determines which combination of people may share a dwelling unit and there is central to the discussion of Model 1.

Recent developments in common law due to decisions of Canadian courts, notably the Supreme Court of Canada in the decision in R. v. Bell, [1979] 2 S.C.R. 212, 26 N.R. 457, 98 D.L.R. (3d) 255, have shaken municipal solicitors and planning staffs with regard to the use of this tool for controlling density and type of use. A more recent Ontario decision considering Bell has offered some comfort. That case is Smith v. Township of Tiny, 27 O.R. (2d) 690.

In those municipalities that use such terms as "a

one-family dwelling unit" or a "multiple-family dwelling unit", the definition of "family" is crucially important to those who wish to promote the sharing of dwelling units by unrelated, unmarried people. The definition of "family" is also crucially important to municipal authorities who, subsequent to the Bell decision may be faced with an unenforceable provision in the zoning by-law, which, if not severable, can render the entire residential section of the by-law invalid.

The relevant provisions of each zoning by-law follow immediately with a capsule analysis of the application to Model 1. A discussion of the Bell decision follows.

KINGSTON

The Kingston by-law will permit Model 1 type sharing so long as no more than five people share the unit.

> 4.36 FAMILY means
>
> (a) One person occupying a dwelling unit, or
>
> (b) Two or more persons occupying a dwelling unit who are related by marriage, common law marriage, consanguinity or adoption, and may include:
>
> i. one or more full time domestic servants,
>
> ii. foster children placed with the family by the Children's Aid Society under The Child Welfare Act,
>
> iii. not more than three related or unrelated persons whose status is that of paying lodgers or boarders who live with one person occupying a dwelling unit, or with two or more persons occupying a dwelling unit who are related by marriage, common law marriage, consanguinity or adoption
>
> (c) A group of not more than five unrelated persons occupying a dwelling unit.

HAMILTON

The Hamilton by-law puts no impediment in the way of Model 1 type sharing so long as the group of people live as a "single housekeeping unit" which is not defined and could give rise to problems of interpretation. Density of occupation will

only be controlled by Ontario Building Code minimum standards and local health standards.

"Dwelling" as defined in the by-law includes the word "family" which is also defined:

> "Dwelling" shall mean a single-family dwelling, a two-family dwelling or a three-family dwelling;
>
> (vii) "Family" shall mean a person or a group of two or more persons occupying premises and living as a single housekeeping unit, whether or not related to each other by blood or marriage, and shall include bona fide domestic servants employed as such on the premises, but not any boarder or lodger; as distinguished from a person or group of persons occupying a room or suite in a hotel, hostel or ordinary lodging house;

TORONTO

In those areas of Toronto where the by-law refers to "one-family" or "multiple-family" dwelling units, occupation as anticipated by Model 1 will be feasible so long as no more than five unrelated people share.

In those areas where "private detached dwelling house" is used to indicate the type of use, Model 1 type sharing will not be permitted due to the definition of "private detached dwelling house" which refers only to relationships of "consanguinity, marriage or legal adoption without one or more full-time domestic servants". It is possible, after Bell and Smith v. Tiny that this section may be invalid.

> "family" means one person, or two or more persons who are interrelated by bonds of consanguinity, marriage or legal adoption, or a group of not more than five unrelated persons occupying, with or without one or more full-time domestic servants, a dwelling unit;
>
> (a) "dwelling unit" means a room or suite of two or more rooms designed or intended for use by one or more persons as living accommodation in which culinary and sanitary conveniences are provided for the exclusive use of such person or persons; (886-79)

"private detached dwelling house" means the whole of a dwelling house occupied or capable of being occupied by one person or two or more persons related by bonds of consanguinity, marriage or legal adoption, with or without one or more full-time domestic servants; (R1)

(1) No person shall, within any R1 district, use any lot or erect or use any building or structure for any purpose expect a G purpose or one or more of the following R1 uses, namely:

(a) a private detached dwelling house, including the keeping therein of:

(1) not more than two (2) roomers or boarders;

(2) not more than three (3) foster children each of whom is a brother-german or a sister-german of all the others; (20816)

WOODSTOCK

Model 1 type sharing will be acceptable in Woodstock so long as no more than 4 unrelated people share the dwelling unit.

2.36.1 "DWELLING UNIT", means a suite of two or more rooms, designed or intended for use by one family only, in which sanitary conveniences and cooking facilities are provided and which has a private entrance either from the outside of the building or through a common hallway.

2.45 "FAMILY", means one person or two or more persons who are interrelated by bonds of marriage, legal adoption or consanguinity, or a group of not more than 4 unrelated persons occupying a dwelling unit.

NORTH YORK

North York's definition of "family" was in issue in Bell and the Supreme Court of Canada held that it was unreasonable and ultra vires and therefore an invalid exercise of the power created by section 35(1) of the Planning Act. The definition remains in the office consolidation of the zoning by-law (North York By-Law #7625) but is unenforceable. Thus at present North York has

no restriction on the number of people sharing a dwelling unit.

OTTAWA

The Ottawa by-law contains no impediment to Model 1 type sharing so long as the sharing group does not exceed five people and the group "maintains a common household."

The definition of "family" distinguishes a family from "a group of persons occupying a boarding house, rooming house, lodging house"... From the definitions it would appear that the essential elements of a boarding, lodging or rooming house are "a proprietor", the provision of lodging and/or meals for compensation and a group of lodgers or boarders exceeding three in number. Should the group sharing the house fit within this description, the use would be restricted to those areas where rooming, boarding or lodging house use is permitted.

> "boarding house" means a building or portion thereof, other than a hotel where lodging and meals for three (3) or more persons, exclusive of the proprietor and his family, are provided for compensation.
>
> "rooming house" or "lodging house" means a building or portion thereof, other than a hotel, where lodging for three (3) or more persons, exclusive of the proprietor and his family, is provided for compensation.
>
> "dwelling unit" means one or more rooms connected together as a separate unit in the same structure and constituting an independent housekeeping unit for residential occupancy by a family with facilities for persons to sleep, cook and eat and including its own sanitary facilities.
>
> *12. "family" means one or more persons whether or not related by blood, marriage of adoption, and including domestic servants and gratuitous guests, who live together in one dwelling unit and maintain

> a common household as distinguished from a group of persons occupying a boarding house, rooming house, lodging house, club, hotel, fraternity, sorority or institutional building, provided that a family which is not related by blood, marriage or adoption shall not exceed five (5) persons.*

THE BELL DECISION AND SUBSEQUENT DEVELOPMENTS

In the Bell case the appellant and two other people shared a detached duplex in the Borough of North York. Mr. Bell was the sole tenant so far as the landlord was concerned, but he and his friends shared the costs as co-occupants. Mr. Bell was charged with violating North York By-Law #7625 prohibiting the use of the building for other than occupancy by one family as defined in the by-law. Initially the appellant was found guilty by a Justice of the Peace. This conviction was reversed at the County Court and the reversal upheld at Divisional Court. The Court of Appeal found for the Borough, but the Supreme Court allowed the appeal by Bell.

It was not in dispute that Mr. Bell and his co-occupants were outside the uses permitted in the by-law, and that if the by-law were upheld he would be in contravention of it.

The appellant argued that the prohibition contained in the by-law was an unreasonable, and therefore, invalid, exercise of the power under S35(1) of the Planning Act. S242 of the Municipal Act containing the general power to enact by-laws, and S241(2) of the Municipal Act which provides that by-laws enacted by virtue of powers under the Municipal Act are not to be held invalid on the grounds of unreasonableness were not considered as relevant by Estey C.J.H.C. at Divisional Court when he decided for Bell or by MacKinnon J.A. at the Court of Appeal when he decided against Bell. It was said by both that the by-law in question was enacted solely under the powers of S35(1) of the Planning Act. Spence J. dealt no further with this issue and appears to have accepted this interpretation.

Spence balanced the view in Re Howard v. City of Toronto (1927), 61 OLR 563, where it was said:

> What is or is not in the public interest is a matter to be determined by the judgment of the municipal council; and what it determines, if in reaching its conclusion it acted honestly and within the limit of its power, is not open to review by the Court...
>
> The question of the relative balance of convenience or detriment to different persons is a matter which the Legislature has committed to the consideration and determination of the municipal council, and their judgment on that question, if bona fide exercised in what they believe to be the public interest, will not be interfered with by the Court: In re Inglis and City of Toronto, 9 OLR 562, per Anglin, J. at p. 568: Re Mills and City of Hamilton (1907), 9 O.W.R. 731.

against the doctrine of unreasonableness as set out in Kruse v. Johnson (1898) 2 QB 91. Although Spence mentions the Municipal Act in the quote below, presumably he mentions it in the context of legislation to which it pertains, and he is still accepting the arguments of Estey C.J.H.C., and MacKinnon J.A. with regards to the applicability of the Municipal Act to the by-law under consideration.

> "I also realize that the doctrine of unreasonableness permitted the declaration of invalidity as to municipal by-laws has, by virtue of the provisions set out in the Municipal Act, lately been very much limited but I point out that even as limited the doctrine still exists and in Kruse v. Johnson, supra Lord Russell, in holding for a strong Divisional Court, that the particular by-law was not ultra vires, said at pp. 99-100:
>
> I do not mean to say that there may not be cases in which it would be the duty of the Court to condemn by-laws, made under such authority as these were made, as invalid because unreasonable.

> But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires." But it is in this sense, and in this sense only, as I conceive, that the question of unreasonableness can properly be regarded.
>
> In view of the many possible inequitable applications of the definition of "family" which I have mentioned above, I am of the opinion that the by-law in its device of adopting "family" as being the only permitted occupants of a self-contained dwelling unit comes exactly within Lord Russell's words as to be found to be "such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men" and, therefore, as Lord Russell said, the Legislature never intended to give authority to make such rules and the device of zoning by reference to the relationship of occupants rather than the use of the building is on which is ultra vires of the municipality under the provisions of the "Planning Act".

The stress is on the definition of "family in the by-law in the paragraph quoted immediately above. This stress is emphasized by a passage earlier in the judgment where Spence said:

> I am in exact agreement with His Honour Judge Hogg when he said that the by-law in question restricted the occupation to "family" and then defined "family" by reference to consanguinity, marriage and adoption only, and so was not regulating the use of the building but who used it."

It is one interpretation of the foregoing passages that the emphasis on "family" as defined in the by-law is not separable from the remainder of each sentence, and that each "and" acts conjunctively to tie the sentences together.

It is a counter-interpretation that the sentences can be dismantled and the various parts instead of being read in conjunction are to read disjunctively and to stand on their own.

If the first interpretation were adopted and the judgment were to be taken at its narrowest it would be seen as a decision relating to a by-law under the powers in the Planning Act defining "family" by reference consanguinity, marriage and adoption only as being the only permitted occupants of a self-contained dwelling unit. It does not necessarily follow that another method of defining the users of land would be found "unreasonable" within Kruse & Johnson instead of being within the public interest per Howard and therefore acceptable. This would be consistent with the narrow interpretations the Supreme Court often gives its own decisions. It would also satisfy the implicit civil libertarian aspects of the case, while leaving intact the municipalities' abilities to control the type of land use with regard to services and densities.

The second view, that the various qualifying parts of the sentences quoted above can be severed from the whole, despite the conjunctions, could lend to the interpretation that "Zoning by reference to...occupants rather than the use of the building is one which is ultra vires of the municipality." This, however, involves omitting "'the relationship" of the occupants." The reference in this phrase to "relationship" throws one back to considering that the decision is regarding "family" as defined by reference to relationship, namely, consanguinity, marriage and adopiton only. In the U.S. case of Village of Belle Terre and Borass (1974) 4 U.S. 1(USSC) Mr. Justice Douglas was faced with a similar provision in a by-law, with the notable exception that provision was made in the definition of "family" for

> "A number of persons but not exceeding two (2) living and cooking together as

> as a single housekeeping unit though not related by blood, adoption, or marriage, shall be deemed to constitute a family".

It appears from the judgment that this inclusion prevented the by-law from being successfully attacked on civil libertarian grounds:

> "It is said that the Belle Terre ordinance reeks with an animosity to unmarried couples who live together. There is no evidence to support it; and the provisions of the ordinance bringing within the definition of a "family" two unmarried people belies the charge.
>
> The ordinance places no ban on other forms of association, for a "family" may, so far as the ordinance is concerned, entertain whomever it likes."

This seems to take into account the "relationship" concern, and the resulting "unreasonableness" in Bell. A similar by-law might well have stood the test in Canada and since Bell an Ontario High Court decision bears out this theory.

The recent decision of the Ontario High Court in Smith v. Township of Tiny upheld the section of the by-law defining "family", while following Bell. The definition of "family" in that case follows:

> "FAMILY" means one or more human beings related by blood or marriage, or common law marriage or a group of not more than three human beings who need not be related by flood or marriage, living together as a single housekeeping unit. "Family" also includes domestic servants or not more than two roomers or boarders. "Common law marriage" means a man and a woman living together as a family without the sanctity of marriage.

Robins, J. held that the section of the by-law was valid and said at page 695:

> "The prohibition contained in the by-law now

> before me differs significantly from that contained in the North York and Toronto by-laws. "Family" here is not confined to persons related by blood or marriage - common law relationships and unrelated groups are also included in the definition. With the broad definition of this by-law none of the "dire results" or "many possible inequitable applications of the definition" referred to by Spence, J., would arise, and indeed, such consequences have not even been suggested. Land use restricted to a particular type or group of persons may be unreasonable or discriminatory and hence ultra vires. However, in my view, a restriction based upon a definition of "family" which incorporates most types of arrangements usual for people living together as a simple housekeeping unit in premises commonly described as single-family" dwellings cannot be said to be either unreasonable or discriminatory or to constitute zoning based on the relationship of the occupants. In invoking the definition of "family" used in the by-law, it appears to me the township employed a valid zoning device to regulate the "use" and "character" of residential premises. This argument of the plaintiff must accordingly fail."

In summary, those by-laws referring to maximum numbers of occupants will likely be valid exercises of zoning powers. It also follows that sharing per Model 1 will be a permitted use throughout Ontario municipalities, subject only to limits in numbers of occupants. Zoning by reference to relationships will not be valid zoning.